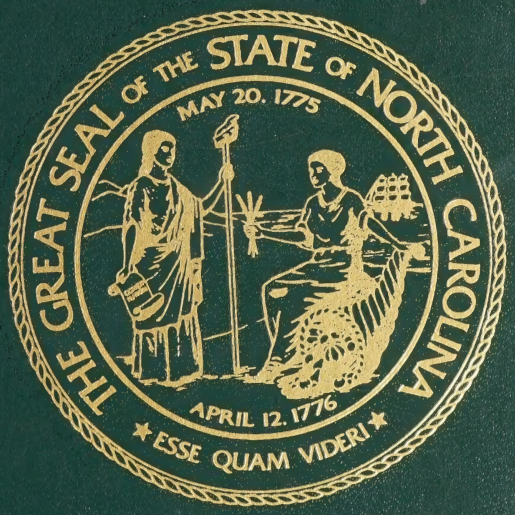
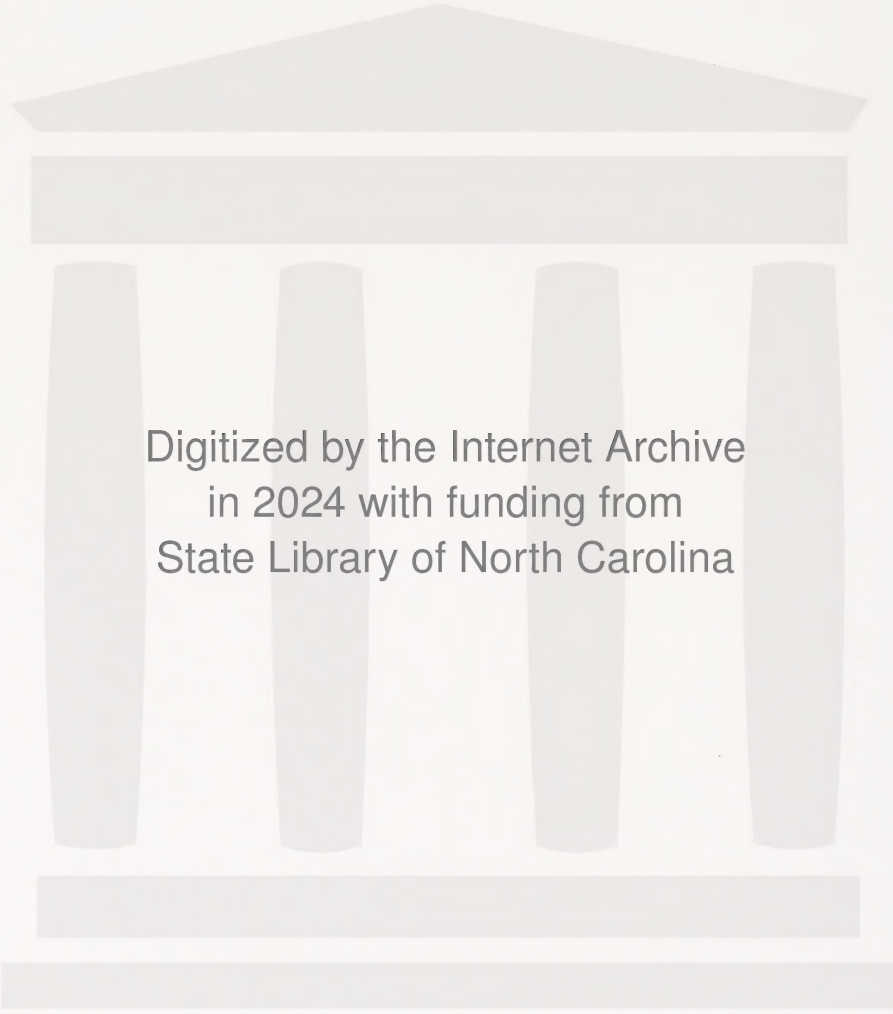
General Statutes of North Carolina

ANNOTATED



2004 INTERIM SUPPLEMENT

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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

2004 INTERIM SUPPLEMENT

Volume 2

Chapters 105A to 168A
NC Constitution
US Constitution
Tables

CONTAINING GENERAL LAWS OF NORTH CAROLINA
ENACTED BY THE GENERAL ASSEMBLY

Prepared under the Supervision of
THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA
by
the Editorial Staff of the Publishers



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45411-11 (interim supplement hardbound set)
4660012 (interim supplement softbound set)

ISBN 0-8205-9801-1 (interim supplement hardbound set)
ISBN 0-8205-9800-3 (interim supplement softbound set)



Matthew Bender & Company, Inc.
P.O. Box 7587, Charlottesville, VA 22906-7587

www.lexisnexis.com

(Pub.45350) (HB)
(Pub.46405) (SB)

Preface

This Volume contains the general laws of a permanent nature enacted by the General Assembly at the 2004 Regular Session, which are within Chapters 2004-1 through 2004-203, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 60 days after the adjournment of the session" in which passed.

For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

ROY COOPER
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2004 Regular Session affecting Chapters 2004-1 through 2004-203.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted on LEXIS through May 31, 2004. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review through Volume 82, no. 5, p. 1942.
Wake Forest Law Review through Volume 39, Pamphlet No. 2, p. 557.
Campbell Law Review through Volume 26, no. 2, p. 176.
Duke Law Journal through Volume 52, no. 5, p. 1055.
North Carolina Central Law Journal through Volume 25, no. 2, p. 242.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1 of the General Statutes. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 of the General Statutes for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821,1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 2004

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2004 Interim Supplement to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

ROY COOPER

Attorney General of North Carolina

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Constitution of North Carolina

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The General Statutes of North Carolina
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Setoff Debt Collection Act.

Article 1.

In General.

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105A-2. Definitions.
105A-13. Collection assistance fees.

Article 1.

In General.

§ 105A-2. Definitions.

The following definitions apply in this Chapter:

(1) Claimant agency. — Either of the following:
  a. A State agency.
  b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).

(2) Debt. — Any of the following:
  a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
  b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
  c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.
  d. Reserved for future codification purposes.
  e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
    1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
    2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
    3. A successor program of one of these programs.

(3) Debtor. — An individual who owes a debt.

(4) Department. — The Department of Revenue.

(5) Reserved.

(6) Local agency. — Any of the following:
  a. A county, to the extent it is not considered a State agency.
  b. A municipality.

c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.

(7) Net proceeds collected. — Gross proceeds collected through setoff against a debtor's refund minus the collection assistance fees provided in G.S. 105A-13.

(8) Refund. — An individual's North Carolina income tax refund.

(9) State agency. — Any of the following:

a. A unit of the executive, legislative, or judicial branch of State government.

b. A local agency, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act. (1979, c. 801, s. 94; 1981, c. 724; 1983, c. 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589, s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e), (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2; c. 856, s. 12; 1989, c. 141, s. 2; c. 539, s. 1; c. 699; c. 727, s. 30; c. 770, s. 75.2; 1993 (Reg. Sess., 1994), c. 735, s. 1; 1995, c. 227, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.30(d); 1997-433, ss. 3.3, 11.3; 1997-443, ss. 11A.118(a), 11A.119(a), 11A.122, 12.26; 1997-490, s. 1; 1998-17, s. 1; 1998-98, s. 38(a); 2002-156, s. 5(a); 2003-333, s. 1; 2004-138, s. 1.)

Effect of Amendments. — Session Laws 2004-138, s. 1, effective January 1, 2004, and applicable to income tax refunds determined on or after that date, inserted subdivision (6)d.; and substituted "local agency" for "county" in subdivision (9)b.

§ 105A-13. Collection assistance fees.

(a) State Setoff. — To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of five dollars ($5.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Repealed by Session Laws 2001-380, s. 3, effective November 1, 2001.

(c) Local Debts. — To recover the costs incurred by local agencies in submitting debts for collection under this Chapter, a local collection assistance fee of fifteen dollars ($15.00) is imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The local collection assistance fee does not apply to child support debts.

(d) Priority. — If the Department is able to collect only part of a debt through setoff, the collection assistance fee provided in subsection (a) of this section has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt. (1979, c. 801, s. 94; 1989 (Reg. Sess., 1990), c. 946, s. 3; 1995, c. 360, s. 4(a); 1997-490, s. 1; 2000-126, s. 6; 2001-380, s. 3; 2002-156, s. 5(c); 2004-21, s. 1.)

Effect of Amendments. —

Session Laws 2004-21, s. 1, effective for fees assessed on or after January 1, 2005, in subsection (a), substituted "five dollars ($5.00)" for "no more than fifteen dollars ($15.00)" in the first sentence and deleted the former third sentence which read: "The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year."

Chapter 106.

Agriculture.

Article 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

Sec.
106-266.6 through 106-266.19 [Repealed.]

Article 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

Sec.
106-569 through 106-579. [Repealed.]

Article 1.

Department of Agriculture and Consumer Services.

Part 1. Board of Agriculture.

§ 106-4. Meetings of Board.

CASE NOTES

Cited in Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Article 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§§ 106-266.6 through 106-266.19: Repealed by Session Laws 2004-199, s. 27(a), effective August 17, 2004.

Article 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.

Editor's Note. — Session Laws 2004-199, s. 27(e), effective August 17, 2004, amended G.S. 106-577, which does not exist. The apparent intent of the General Assembly was to amend G.S. 106-557 by substituting "United States Department of Agriculture" for "North Carolina Milk Commission" in the second sentence.

Article 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§§ 106-569 through 106-579: Repealed by Session Laws 1975, c. 179, s. 16.

Editor's Note. — Session Laws 2004-199, s. 27(e), attempted to amend former G.S. 106-577. The apparent intent of the General Assembly was to amend G.S. 106-557.

Article 57.

Nuisance Liability of Agricultural and Forestry Operations.

§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.

Legal Periodicals. — For article, "Looking Beyond the Title Search: Attorneys Must Consider Environmental Regulations," 25 N.C. Cent. L.J. 182 (2003).

Chapter 108A.

Social Services.

Article 2.

Programs of Public Assistance.

Part 1. In General.

Sec.

108A-25. Creation of programs.

Part 6. Medical Assistance Program.

Sec.

108A-58. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility.

Article 1.

County Administration.

Part 1. County Boards of Social Services.

§ 108A-1. Creation.

CASE NOTES

Cited in Rivera v. Guilford County, 286 F. Supp. 2d 635, 2003 U.S. Dist. LEXIS 18214 (M.D.N.C. 2003).

§ 108A-3. Method of appointment; residential qualifications; fee or compensation for services; consolidated human services board appointments.

CASE NOTES

Cited in Rivera v. Guilford County, 286 F. Supp. 2d 635, 2003 U.S. Dist. LEXIS 18214 (M.D.N.C. 2003).

§ 108A-9. Duties and responsibilities.

CASE NOTES

And Has No Sovereign Immunity. — District court declined to grant a county department's Fed. R. Civ. P. 12(b)(1) motion to dismiss a former employee's disability discrimination claims on the ground that the department lacked the capacity to be sued where none of the provisions of G.S. 108A-9 nor any other authority supported the contention that the department was not a legal entity due to the North Carolina Board of Social Services's governing authority. Rivera v. Guilford County, 286 F. Supp. 2d 635, 2003 U.S. Dist. LEXIS 18214 (M.D.N.C. 2003).

Local Appointing Agency. — Where an employer is a county department of social services, the local appointing agency is the director of the department. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

ARTICLE 2.

Programs of Public Assistance.

Part 1. In General.

§ 108A-25. Creation of programs.

(a) The following programs of public assistance are established, and shall be administered by the county department of social services or the Department of Health and Human Services under federal regulations or under rules adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

(1) Repealed by S.L. 1997-443, s. 12.3, effective August 28, 1997.
(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program.

(b) The program of medical assistance is established as a program of public assistance and shall be administered by the county departments of social services under rules adopted by the Department of Health and Human Services.

(b1) The Work First Program is established as a program of public assistance and shall be supervised and administered as provided in Part 2 of this Article.

(c) The Department of Health and Human Services may accept all grants-in-aid for programs of public assistance which may be available to the State by the federal government. The provisions of this Article shall be liberally construed in order that the State and its citizens may benefit fully from the federal grants-in-aid.

(d) Each Community Care network organization designated by the Department of Health and Human Services as responsible for coordinating the health care of individuals eligible for medical assistance in a county is hereby deemed to be a public agency that is a local unit of government for the sole and limited purpose of all grants-in-aid, public assistance grant programs, and other funding programs. (1937, c. 135, s. 1; c. 288, ss. 3, 31; 1949, c. 1038, s. 2; 1955, c. 1044, s. 1; 1957, c. 100, s. 1; 1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1975, c. 92, s. 4; 1977, 2nd Sess., c. 1219, s. 9; 1979, c. 702, s. 1; 1981, c. 275, s. 1; 1997-443, ss. 11A.118(a), 11A.122, 12.3; 2004-203, s. 41.)

Effect of Amendments. — Session Laws 2004-203, s. 41, effective August 17, 2004, added subsection (d).

CASE NOTES

Recoupment of Overpayments. — Where North Carolina Department of Health and Human Services, Division of Medical Assistance (DMA) sought to recoup Medicaid overpayments made to a debtor hospital, in order to qualify for recoupment, the DMA's recoupment claim was required to have arisen from the "same transaction" as the overpayment; the bankruptcy court found that the ongoing stream of services, advances, and reconciliations that was unique to the Medicaid system constituted a single transaction for recoupment purposes, and although the relationship between the hospital and the DMA involved several transactions for the provision of services to several patients, this relationship was not analogous to multiple, separate equipment purchases from a single supplier, which would not have been part of the same transaction. In re Dist. Mem'l Hosp. of Southwestern N.C., Inc.,

297 Bankr. 451, 2002 Bankr. LEXIS 1765 (Bankr. W.D.N.C. 2002).

Cited in Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004).

Part 6. Medical Assistance Program.

§ 108A-54. Authorization of Medical Assistance Program.

Blue Ribbon Commission on Medicaid Reform. — Session Laws 2003-284, s. 6.14A(a)-(c)[(d)], as amended by Session Laws 2003-283, s. 1, as amended by Session Laws 2004-161, s. 52.1, effective July 1, 2003, provides: "(a) There is established the North Carolina Blue Ribbon Commission on Medicaid Reform (Commission). The Commission shall examine the State's Medicaid program and make comprehensive recommendations for fundamental reform. The Commission shall consider:

"(1) Methods to responsibly restrain the growth in Medicaid spending.

"(2) Best practices in both the public and private sectors in managing and administering health care.

"(3) Options for maximizing existing resources while controlling Medicaid program costs.

"(4) Current array of services available within the State Medicaid program to determine the appropriateness of the type, frequency, and duration of those services.

"(5) Opportunities for long-term, systemic change in the Medicaid program through the use of federal waivers and other management tools.

"(6) How to minimize the State and county share of Medicaid costs and maximize federal participation in Medicaid programs.

"(7) The role of Medicaid in the State's economy.

"(8) Any other matter relating to reform of the State Medicaid program.

"(b) The Commission shall consist of 16 members appointed as follows:

"(1) Eight members appointed by the Speaker of the House of Representatives, including one member who shall be designated as House Cochair. No more than five may be legislators.

"(2) Eight members appointed by the President Pro Tempore of the Senate, including one member who shall be designated as Senate Cochair. No more than five may be legislators.

"The appointing officer shall fill vacancies. The Commission shall meet at the call of the Cochairs. Members of the Commission shall receive per diem, subsistence, and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission may contract for consultant services as provided in G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may exercise all of the powers provided under G.S. 120-19 through G.S. 120-19.4 while in the discharge of its official duties. The funds appropriated by this act to the Reserve for the Blue Ribbon Commission on Medicaid Reform shall be transferred to the Department of Health and Human Services in order to draw down federal match funds to be used to cover the cost of the Commission's work.

"(c) By April 1, 2004, the Commission shall make an interim report to the 2003 General Assembly. The Commission shall make its final report to the 2005 General Assembly by February 1, 2005, and shall expire upon submitting that report.

"(c)[(d)] Cost savings resulting from measures identified by the North Carolina Blue Ribbon Commission on Medicaid Reform established by this section shall first be used to replenish the Medicaid Trust Fund in order to meet expected federal obligations in the 2004-2005 fiscal year. If these cost savings are not established by July 1, 2004, then the General Assembly shall identify in the bill revising the 2004-2005 budget other funds to replenish the Medicaid Trust Fund in an amount sufficient to meet expected federal obligations."

Pilot Program to Test New Approaches to Managing Access to and Utilization of Health Care Service to Medicaid Recipients. — Session Laws 2004-124, s. 10.11 provides: "The Department of Health and Human Services shall establish and implement two or more pilot programs to test new approaches to management of access to and utilization of health care services to Medicaid recipients. The purpose of the pilot programs is to determine if additional cost savings can be achieved in addition to that provided by the Community Care of North Carolina program. With respect to at least two of the pilot programs, the Department shall contract with a physician-owned and managed network that has demonstrated success in improving the cost-effectiveness of Medicaid services in at least one state other than

North Carolina. The Department shall develop a payment methodology that may include sharing savings with contractors providing medical management services but the methodology shall not allow increased spending relative to current appropriations. The Department may apply for federal waivers necessary to implement this section. The Department shall report on the implementation of the pilot programs to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than February 1, 2005."

PACE Pilot Program Funds. — Session Laws 2004-124, s. 10.12(a) - (d) provides: "(a) The Department of Health and Human Services, Division of Medical Assistance, shall develop a pilot program to implement the Program for All-Inclusive Care for the Elderly (PACE). One pilot site shall be planned for the southeastern area of the State and the other pilot site shall be planned for the western area of the State. The Division shall design the pilot program to access federal Medicaid and Medicare dollars to provide acute and long-term care services for older patients through the use of interdisciplinary teams. When implemented, services provided through the PACE pilot program may include physician visits, drugs, rehabilitation services, personal care services, hospitalization, and nursing home care. The PACE pilot program may also offer social services intervention, case management, respite care, or extended home care nursing.

"(b) Of the funds appropriated to the Department of Health and Human Services, Division of Medical Assistance, for the 2004-2005 fiscal year, the sum of one hundred twenty-three thousand one hundred fifty-six dollars ($123,156) shall be used to support two positions in the Division of Medical Assistance to develop the pilot programs in accordance with subsection (a) of this section. These funds may also be used to contract for actuarial analysis as part of the development of the pilot programs.

"(c) The Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services on March 1, 2005, on PACE pilot program development. The report shall include services proposed to be offered under the pilot program, administrative structure of the pilot program, number of Medicare and Medicaid eligible recipients anticipated to receive services from the PACE pilot sites, and the projected savings to the State from PACE pilot program implementation.

"(d) Nothing in this section obligates the General Assembly to appropriate funds to implement the PACE program statewide."

DHHS Study Medicaid Institutional Bias. — Session Laws 2004-124, ss. 10.13(a) and (b) provides: "(a) The Department of Health and Human Services shall contract with an independent entity to study whether the State's Medicaid program has a bias that favors support for individuals in institutional settings over support for individuals living at home and, if a bias is found, to determine and recommend ways to alleviate the bias. The entity selected by the Department shall be one that has documented experience in conducting similar studies. The study shall include consideration of all in-home services paid under the State's Medicaid program, including CAP/DA, home health, and personal care services. The Department shall report the results of the study to the North Carolina Study Commission on Aging by January 2005.

"(b) From State and federal funds available to the Department of Health and Human Services for the 2004-2005 fiscal year, the sum of one hundred fifty thousand dollars ($150,000) may be used to fund the study required by this section."

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

CASE NOTES

Cited in Okale v. N.C. Dep't of Health & Human Servs., 153 N.C. App. 475, 570 S.E.2d 741, 2002 N.C. App. LEXIS 1171 (2002); In re Dist. Mem'l Hosp. of Southwestern N.C., Inc., 297 Bankr. 451, 2002 Bankr. LEXIS 1765 (Bankr. W.D.N.C. 2002); Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004).

§ 108A-58. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility.

(a) Any person, otherwise eligible, who, either while receiving medical assistance benefits or within the time period mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, shall be ineligible to receive medical assistance benefits as set forth in section 1917(c) of the Social Security Act. Countable real and personal property includes real property, excluding a homesite, unless other applicable federal or State law requires the homesite to be counted for transfer of property purposes, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for medical assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest in real or personal property, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for medical assistance benefits unless the person, or the person's legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person who sells, gives, assigns or transfers real or personal property or an interest in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, as provided in subsection (a) of this section, shall, after the time of transfer, be ineligible to receive these benefits until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of the person for the person's maintenance and support, including medical expenses, paid or incurred, or shall be ineligible based on the period of time required under section 1917(c) of the Social Security Act.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, of any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving medical assistance or within the time period mandated by controlling federal law and the consequences of the sale, gift, assignment of transfer of such tangible personal property shall be determined under the provisions of subsections (c) and (f) of this section.

(e) The presumptions created by subsections (b) and (d) may be overcome if the person receiving or applying for medical assistance, or the person's legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for medical assistance benefits.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation, if any, received for the property or interest. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained

according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) Repealed by Session Laws 2003-284, s. 10.26, effective July 1, 2003.

(h) This section shall not apply to applicants for or recipients of Work First Family Assistance or to persons entitled to medical assistance by virtue of their eligibility for Work First Family Assistance.

(i) Repealed by Session Laws 2004-124, s. 10.6, effective July 1, 2004. (1977, c. 59, s. 1; 1981, c. 275, s. 1; c. 758, s. 2; 1989, c. 120; 1997-443, s. 12.11; 2003-284, s. 10.26; 2004-124, s. 10.6.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 10.6, effective July 1, 2004, repealed subsection (i), which had made the section applicable only to transfers made before July 1, 1988.

Article 4.

Public Assistance and Social Services Appeals and Access to Records.

§ 108A-79. Appeals.

CASE NOTES

Cited in Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004).

Chapter 110.
Child Welfare.

Article 7.

Child Care Facilities.

Sec.
110-88. Powers and duties of the Commission.

Article 9.

Child Support.

110-136.13. Employer responsibilities.

Sec.
110-139.2. Data match system; agreements with financial institutions.

Article 7.

Child Care Facilities.

§ 110-88. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any child care facility that meets all applicable standards established under this Article.

(1a) To adopt applicable rules and standards based upon the capacity of a child care facility.

(2) To require inspections by and satisfactory written reports from representatives of local or State health agencies, fire and building inspection agencies, and from representatives of the Department prior to the issuance of an initial license to any child care center.

(2a) To require annually, inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued.

(3) Repealed by Session Laws 1997-506, s. 4.

(4) Repealed by Session Laws 1975, c. 879, s. 15.

(5) To adopt rules and develop policies for implementation of this Article, including procedures for application, approval, annual compliance visits for centers, and revocation of licenses.

(6) To adopt rules for the issuance of a provisional license that shall be in effect for no more than 12 consecutive months to a child care facility that does not conform in every respect with the standards established in this Article and rules adopted by the Commission pursuant to this Article but that is making a reasonable effort to conform to the standards.

(6a) To adopt rules for administrative action against a child care facility when the Secretary's investigations pursuant to G.S. 110-105(a)(3) substantiate that child abuse or neglect did occur in the facility. The rules shall provide for types of sanctions which shall depend upon the severity of the incident and the probability of reoccurrence. The rules shall also provide for written warnings and special provisional licenses.

(7) To develop and adopt voluntary enhanced program standards which reflect higher quality child care than the mandatory standards established by this Article. These enhanced program standards must address, at a minimum, staff/child ratios, staff qualifications, parent

involvement, operational and personnel policies, developmentally appropriate curricula, and facility square footage.

(8) To develop a procedure by which the Department shall furnish those forms as may be required for implementation of this Article.

(9) Repealed by Session Laws 1985, c. 757, s. 156(66).

(10) To adopt rules for the issuance of a temporary license which shall expire in six months and which may be issued to the operator of a new center or to the operator of a previously licensed center when a change in ownership or location occurs.

(11) To adopt rules for child care facilities which provide care for children who are mildly sick.

(12) To adopt rules regulating the amount of time a child care administrator shall be on-site at a child care center.

(13) To adopt rules for child care facilities that provide care for medically fragile children.

The Division and the Commission shall permit individual facilities to make curriculum decisions and may not require the standards, policies, or curriculum of any single accrediting child care organization. If Division inquiries to providers include database fields or questions regarding accreditation, the inquiry shall permit daycare providers to fill in any accrediting organization from which they have received accreditation. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 543, s. 2; c. 788, s. 3; c. 827, s. 232; 1991, c. 273, s. 2; 1993, c. 185, s. 1; 1997-506, ss. 4(a), 28.3; 1999-130, ss. 1, 5; 2004-124, s. 10.35.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 10.35, effective July 1, 2004, added subdivision (13).

Article 9.

Child Support.

§ 110-136.13. Employer responsibilities.

(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and 110-136.14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act.

(b) Within 20 business days after the date of the National Medical Support Notice, the employer shall transfer the Notice to the health insurer or health care plan administrator that provides health benefit plan coverage for which the child is eligible unless one of following applies:

(1) The employer does not maintain or contribute to plans providing dependent or family health insurance.

(2) The employee is among a class of employees that are not eligible for family health benefit plan coverage under any group health plan maintained by the employer or to which the employer contributes.

(3) Health benefit plan coverage is not available because the employee is no longer employed by this employer.

(4) State or federal withholding limitations prevent the withholding from the obligor's income of the amount required to obtain insurance under the terms of the plan.

(c) If the employer is not required to transfer the Notice under subsection (b) of this section, then the employer shall, within the 20 business days after the

date of the Notice, inform the agency in writing of the reason or reasons the Notice was not transferred.

(d) Upon receipt from the health insurer or health care plan administrator of the cost of dependent coverage, the employer shall withhold this amount from the obligor's wages and transfer this amount directly to the insurer or plan administrator.

(e) In the event the health insurer or health care plan administrator informs the employer that the Notice is not a "qualified medical child support order" (QMCSO), the employer shall notify the agency in writing.

(f) In the event the health insurer or health care plan administrator informs the employer of a waiting period for enrollment, the employer shall inform the insurer or administrator when the employee is eligible to be enrolled in the plan.

(g) An employer obligated to provide health benefit plan coverage pursuant to this section shall inform the IV-D agency upon termination of the noncustodial parent's employment within 10 business days. The notice shall be in writing to the agency and shall include the obligor's last known address and the name and address of the new employer, if known.

(h) In the event the employee contests the withholding order, the employer shall initiate and continue the withholding until the employer receives notice that the contested case is resolved.

(i) An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding.

(j) If a court finds that an employer has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.8(e). Additionally, an employer who violates this section is liable in a civil action for reasonable damages. (2001-237, s. 10; 2004-203, s. 9.)

Effect of Amendments. — Session Laws 2004-203, s. 9, effective August 17, 2004, substituted "110-136.14" for "110.14" in subsection (a).

§ 110-139.2. Data match system; agreements with financial institutions.

(a) The Department of Health and Human Services and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial

institution has a delinquent child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the delinquency. In order to be able to attach a lien on and levy an obligor's account, the obligor's child support obligation shall be in arrears in an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the arrears amount in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor and the financial institution a notice as provided by this subsection. The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure, except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified arrears amount, information for the obligor on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor to contest the lien, within 10 days after the obligor is served with the notice, the obligor shall send written notice of the basis of the obligor's contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The lien may be contested only on the basis that the arrearage is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), or the obligor is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the delinquent obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State. (1997-433, s. 9; 1997-443, s. 11A.122; 1998-17, s. 1; 2003-288, s. 4; 2004-203, s. 42.)

Effect of Amendments. —

Session Laws 2004-203, s. 42, effective August 17, 2004, in the first paragraph following subsection (b1), substituted a comma for "and" following "Procedure," inserted "except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent" at the end of the second sentence, and added "The notice" at the beginning of the third sentence.

Chapter 111.

Aid to the Blind.

Article 4.

Operation of Highway Vending Facilities on North Carolina Highways.

Sec.
111-52. Profits from Highway Vending Fund.

Article 4.

Operation of Highway Vending Facilities on North Carolina Highways.

§ 111-52. Profits from Highway Vending Fund.

Profits generated by highway vending locations as of June 30, 1992, and deposited in a special fund in accordance with the policies of the Office of the State Controller shall be reserved for the construction and maintenance of highway vending facility projects. (1991 (Reg. Sess., 1992), c. 984, s. 3; 2004-199, s. 2.)

Effect of Amendments. — Session Laws 2004-199, s. 2, effective August 17, 2004, substituted "policies of the Office of the State Controller" for "Administrative Policies and Procedures Manual of the State Controller."

State Library Of North Carolina
Raleigh, N.C.

Chapter 113.

Conservation and Development.

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Article 2.

Acquisition and Control of State Forests and Parks.

Sec.
113-35. State timber may be sold by Department; forest nurseries; control over parks; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

Article 2C.

State Parks Act.

113-44.15. Parks and Recreation Trust Fund.

Article 5A.

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113-77.7. Natural Heritage Trust Fund.
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General Definitions.

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113-169.2. Shellfish license for North Carolina residents without a SCFL.
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113-174. (Effective January 1, 2006) Definitions.
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Article 14C.

North Carolina Saltwater Fishing Fund.

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113-175.1. North Carolina Saltwater Fishing Fund.
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113-175.3. Allocation of investment income of the Fund; other powers and duties.
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Article 15.

Regulation of Coastal Fisheries.

113-182.1. Fishery Management Plans.

Article 16.

Cultivation of Shellfish.

113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.
113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.
113-202.1. Water column leases for aquaculture.
113-210. Under Dock Oyster Culture.

Article 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and rules.
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SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-35. State timber may be sold by Department; forest nurseries; control over parks; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

(a) Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Secretary determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules governing the use by the public of State forests, State parks, State lakes, game refuges, and public shooting grounds under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions shall include a requirement that the permittee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits determined by the Secretary.

(b) The Department may construct, operate, and maintain within the State forests, State parks, State lakes, and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for each of the following:

(1) The erection, maintenance, and use of docks, piers, and any other structures permitted in or on State lakes under rules adopted by the Department.

(2) Hunting privileges on State forests and fishing privileges in State forests, State parks, and State lakes, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(3) Vehicle access for off-road driving at the beach at Fort Fisher State Recreation Area.

(4) The erection, maintenance, and use of a marina at Carolina Beach.

(b1) Members of the public who pay a fee under subsection (b) of this section for access to Fort Fisher State Recreation Area may have 24-hour access to Fort Fisher State Recreation Area from September 15 through March 15 of each year.

(c) The Department may make reasonable rules for the operation and use of boats or other craft on the surface of the waters under its charge. The Department may charge and collect reasonable fees for the use of boats and other watercraft that are purchased and maintained by the Department; however, the Department shall not charge a fee for the use or operation of any other boat or watercraft on these waters.

(d) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(e) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law. (1931, c. 111; 1947, c. 697; 1965, c. 1008, s. 2; 1969, c. 343; 1973, c. 547; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1987, c. 827, s. 92; 1989, c. 727, s. 55; 1993, c. 539, ss. 830, 831; 1994, Ex. Sess., c. 24, s. 14(c); 1997-258, s. 2; 1997-443, s. 11A.119(a); 2003-284, ss. 35.1(b), 35.1A(a), 35.1A(b); 2004-124, s. 12.3(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 12.3(b), provides: "The Department of Environment and Natural Resources shall conduct a study of vehicle use at Fort Fisher State Recreation Area. In preparing the study, the Department shall consult with experts in fields pertinent to this study at the University of North Carolina at Wilmington. This study shall consider and determine in its findings the demand for vehicle access to the beach at Fort Fisher State Recreation Area during different times of the year. This study also shall include a review of scientific studies on the impact of vehicle use on sea turtles and nesting seabirds and shorebirds. This study shall provide an opportunity for comment from interested citizens. This study shall include in its report its findings on sea turtle and bird nesting activity at Fort Fisher State Recreation Area as compared with nesting activity on the adjoining beach that is managed by Bald Head Conservancy and on Masonboro Island and an analysis of the economic impact of restricting 24-hour vehicle access to the beach at Fort Fisher State Recreation Area. No later than February 1, 2005, the Department shall report its findings under this subsection, any other pertinent findings, and any recommendations or legislative proposals to the Environmental Review Commission."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124. s. 12.3(a), effective July 1, 2004, inserted subsection (b1).

Article 2C.

State Parks Act.

§ 113-44.14. Additions to and deletions from the State Parks System.

Cross References. — For components to the State Nature and Historic Preserve, see § 143-260.10.

Editor's Note. —

The preamble to Session Laws 2004-24, provides: "Whereas, Section 5 of Article XIV of the Constitution of North Carolina states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas, and in every other appropriate way to preserve as a part of the common heritage of this State, its open lands and places of beauty; and

"Whereas, the 1987 General Assembly enacted the State Parks Act, which declares that the State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources, and that these resources are part of the heritage of the people of the State, which should be preserved and managed by the people for their use and for the use of their visitors and descendants; and

"Whereas, the Lower Haw River in Chatham County is considered nationally significant for its biological resources, including several rare species and possesses biological, scenic, and recreational resources of statewide significance; and

"Whereas, the Division of Parks and Recreation of the Department of Environment and Natural Resources has identified the Lower Pee Dee, which includes Blewett Falls Lake, as the highest ranked candidate for establishment of a State Recreation Area; Now, therefore, The General Assembly of North Carolina enacts:"

Session Laws 2004-24, s. 1, provides: "The General Assembly authorizes the Department of Environment and Natural Resources to add the Lower Haw River State Natural Area to the State Parks System as provided by G.S. 113-44.14(b)."

Session Laws 2004-24, s. 2, provides: "The Division of Parks and Recreation of the Department of Environment and Natural Resources shall study the feasibility and the desirability of acquiring land and establishing a State Recreation Area at Blewett Falls Lake. The study shall include estimates of the cost of developing the proposed recreation area. The Division shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 December 2005."

Session Laws 2004-25, s. 1, provides: "The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled 'Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green' sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled 'Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green' sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office."

Session Laws 2004-25, the preamble provides: "Whereas, Section 5 of Article XIV of the Constitution of North Carolina authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

"Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the Constitution of North Carolina; and

"Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

"The General Assembly of North Carolina enacts:"

Session Laws 2004-25, s. 3, provides: "The following tract is removed from the State Parks System pursuant to G.S. 113-44.14: The portion of that certain tract or parcel of land at Pilot Mountain State Park in Surry County, Shoals Township, described in Plat Book 21, Page 76, containing 104.280 acres, and shown as the "Horne Creek Living Historical Park" on the drawing prepared by Joe L. Cooke, bearing the preparer's file name Dwg. 3/331, dated 23 March 2004, and filed with the State Property Office. This property may be reallocated to the Department of Cultural Resources for its use of the property as the Horne Creek Living Historical Farm State Historic Site. This property will remain in the State Nature and Historic Preserve."

§ 113-44.15. Parks and Recreation Trust Fund.

(a) Fund Created. — There is established a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund shall be a nonreverting special revenue fund consisting of gifts and grants to the Trust Fund, monies credited to the Trust Fund pursuant to G.S. 105-228.30(b), and other monies appropriated to the Trust Fund by the General Assembly.

(b) Use. — Funds in the Trust Fund are annually appropriated to the North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

(1) Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition, and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes.

(2) Thirty percent (30%) to provide matching funds to local governmental units or public authorities as defined in G.S. 159-7 on a dollar-for-dollar basis for local park and recreation purposes. The appraised value of land that is donated to a local government unit or public authority may be applied to the matching requirement of this subdivision. These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.

(3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

(b1) Geographic Distribution. — In allocating funds in the Trust Fund under this section, the North Carolina Parks and Recreation Authority shall make geographic distribution across the State to the extent practicable.

(b2) Administrative Expenses. — Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses associated with managing capital improvements projects, acquiring land, and administration of local grants programs.

(c) Reports. — The North Carolina Parks and Recreation Authority shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on allocations from the Trust Fund from the prior fiscal year. The Authority also shall provide a progress report no later than March 15 of each year to the same recipients on the activities of and the expenditures from the Trust Fund for the current fiscal year.

(d) Debt. — The Authority may allocate up to fifty percent (50%) of the portion of the annual appropriation identified in subdivision (b)(1) of this section to reimburse the General Fund for debt service on special indebtedness

to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivision (b)(1) of this section. In order to allocate funds for debt service reimbursement, the Authority must identify to the State Treasurer the specific parks projects for which it would like special indebtedness to be issued or incurred and the annual amount it intends to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a parks project requested by the Authority, the Authority must credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer. (1993 (Reg. Sess., 1994), c. 772, s. 1; 1995, c. 456, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 20; 1998-212, ss. 14.6(a), 14.7; 2001-114, s. 1; 2001-487, s. 73; 2004-179, s. 2.4.)

Editor's Note. — Session Laws 2004-179, part 2, authorizes the issuance of special indebtedness to be used to finance park projects. Session Laws 2004-179, s. 2.2, provides: "Identification of Parks Projects. — The specific parks projects for which the special indebtedness may be used are to be identified by the North Carolina Parks and Recreation Authority as provided in G.S. 113-44.15, but are limited to the following projects:

"(1) Acquisition by conservation easement or fee simple up to 17,000 acres near North Carolina military bases in order to prevent encroachment by incompatible development.

"(2) Acquisition of up to 6,000 acres to expand an existing State park, provide gamelands to help protect North Carolina rivers, and provide two new State parks along North Carolina rivers; and capital improvements to an existing State park as part of its expansion."

Session Laws 2004-179, ss. 8.1 and 8.2, provide: "SECTION 8.1 It is the intent of the General Assembly that the proceeds of special indebtedness issued under parts 2 through 4 of this act shall be applied for the purposes provided in those parts, including the acquisition by conservation easement, or otherwise, of land near military bases to prevent encroachment. This acquisition shall be a high priority because of its vital importance to the State of North Carolina.

"SECTION 8.2 None of the proceeds of special indebtedness authorized by parts 2 through 4 of this act may be used to acquire any property by eminent domain."

Session Laws 2004-179, s. 8.3, contains a severability clause.

Effect of Amendments. — Session Laws 2004-179, s. 2.4, effective August 5, 2004, added subheadings in each subsection; added "and to retire debt incurred for these purposes under Article 9 of Chapter 142 of the General Statutes" at the end of subdivision (b)(1); in subsection (b1), substituted "section" for "subsection," and substituted "make" for "consider"; and added subsection (d).

Article 5A.

Natural Heritage Trust Program.

§ 113-77.7. Natural Heritage Trust Fund.

(a) There is established a Natural Heritage Trust Fund in the State Treasurer's office that shall be used to finance the Natural Heritage Trust Program authorized by this Article.

(b) The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chairman of the Board of Trustees.

(c) When the State acquires land pursuant to this Article, the Trustees may direct a request to the State Treasurer to set aside an amount from the Fund not to exceed twenty percent (20%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired, to be placed in a special stewardship account in the Fund. The special stewardship account

shall be a nonlapsing account, and income derived from investment of the account shall be credited to the account. The special stewardship account shall be used for the management of land acquired pursuant to this Article under the direction of the Trustees.

(d) Monies in the Fund are appropriated annually and may be used for the purposes provided in G.S. 113-77.9. (1987, c. 871, s. 1; 1989, c. 86, s. 1; 1993 (Reg. Sess., 1994), c. 772, s. 3; 1997-366, s. 1; 2004-179, s. 3.5.)

Editor's Note. — Session Laws 2004-179, ss. 8.1 and 8.2, provide: "SECTION 8.1 It is the intent of the General Assembly that the proceeds of special indebtedness issued under parts 2 through 4 of this act shall be applied for the purposes provided in those parts, including the acquisition by conservation easement, or otherwise, of land near military bases to prevent encroachment. This acquisition shall be a high priority because of its vital importance to the State of North Carolina.

"SECTION 8.2 None of the proceeds of special indebtedness authorized by parts 2 through 4 of this act may be used to acquire any property by eminent domain."

Session Laws 2004-179, s. 8.3, contains a severability clause.

Effect of Amendments. — Session Laws 2004-179, s. 3.5, effective August 5, 2004, added subsection (d).

§ 113-77.9. Acquisition of lands with funds from the Natural Heritage Trust Fund.

(a) Proposals. — From time to time, but at least once each year, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, the Commissioner of Agriculture, and the Secretary of Cultural Resources may propose to the Trustees lands to be acquired with funds from the Fund. For each tract or interest proposed, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, the Commissioner of Agriculture, and the Secretary of Cultural Resources shall provide the Trustees with the following information:

(1) The value of the land for recreation, forestry, fish and wildlife habitat, and wilderness purposes, and its consistency with the plan developed pursuant to the State Parks Act, the State's comprehensive plan for outdoor recreation, parks, natural areas development, and wildlife management goals and objectives.
(2) Any rare or endangered species on or near the land.
(3) Whether the land contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon.
(4) Whether the land contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature.
(5) The extent to which the land represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural areas.
(6) Other sources of funds that may be available to assist in acquiring the land.
(7) The State department or division that will be responsible for managing the land.
(8) What assurances exist that the land will not be used for purposes other than those for which it is being acquired.
(9) Whether the site or structure is of such historical significance as to be essential to the development of a balanced State program of historic properties.

(b) Land Acquisition and Debt Service. — The Trustees may authorize expenditures from the Fund for the following purposes:

(1) To acquire land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane,

coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes, and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(2) To acquire land as additions to the system of parks, State trails, aesthetic forests, fish and wildlife management areas, wild and scenic rivers, and natural areas for the beneficial use and enjoyment of the public, and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(3) Subject to the limitations of subsection (b2) of this section, to acquire land that contributes to the development of a balanced State program of historic properties.

(b1) Priorities. — In authorizing expenditures from the Fund to acquire land pursuant to this Article, the first priority shall be the protection of land with outstanding natural or cultural heritage values. Land with outstanding natural heritage values is land that is identified by the North Carolina Natural Heritage Program as having State or national significance. Land with outstanding cultural heritage values is land that is identified, inventoried, or evaluated by the Department of Cultural Resources. The Trustees shall be guided by any priorities established by the Secretary, the Chairman of the Wildlife Resources Commission, the Commissioner of Agriculture, and the Secretary of Cultural Resources in their proposals made pursuant to subsection (a) of this section.

(b2) Historic Properties. — The Trustees may authorize expenditure of up to twenty-five percent (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the preceding fiscal year to acquire land under subdivision (3) of subsection (b) of this section. No other funds in the Fund may be used for expenditures to acquire land under subdivision (3) of subsection (b) of this section.

(b3) Debt. — Of the funds credited annually to the Fund pursuant to G.S. 105-228.30, the Trustees may authorize expenditure of up to fifty percent (50%) to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivisions (b)(1) and (2) of this section. In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific natural heritage projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a natural heritage project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

(c) Other Purposes. — The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas conducted under the Natural Heritage Program established pursuant to the Nature Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees may also authorize expenditures from the Fund to pay for conservation and protection planning and for informational programs for owners of natural areas, as defined in G.S. 113A-164.3.

(d) Acquisition. — The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. A State agency with management responsibility for land acquired pursuant to this Article may enter into a

management agreement or lease with a county, city, town, or private nonprofit organization qualified under G.S. 105-151.12 and G.S. 105-130.34 and certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the land. A management agreement or lease shall be executed by the Department of Administration pursuant to G.S. 143-341.

(d1) Local Reimbursement. — In any county in which real property was purchased pursuant to subsection (d) of this section as additions to the fish and wildlife management areas and where less than twenty-five percent (25%) of the land area is privately owned at the time of purchase, that county and any other local taxing unit shall be annually reimbursed, for a period of 20 years, from funds available to the North Carolina Wildlife Resources Commission in an amount equal to the amount of ad valorem taxes that would have been paid to the taxing unit if the property had remained subject to taxation.

(e) Reports. — The Secretary shall maintain and revise twice each year a list of acquisitions made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount paid from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission within 30 days after each revision.

(f) Hunting and Fishing. — No provision of this Article shall be construed to eliminate hunting and fishing, as regulated by the laws of the State of North Carolina, upon properties purchased pursuant to this Article. (1987, c. 871, s. 1; 1989, c. 86, s. 1; 1991, c. 689, s. 339; 1991 (Reg. Sess., 1992), c. 1044, s. 66; 1993 (Reg. Sess., 1994), c. 772, s. 3; 1997-366, s. 2; 1998-212, s. 14.6(b); 2004-179, s. 3.4.)

Parks, Recreation and Preservation of Natural Heritage. — Session Laws 2004-179, part 3, authorizes the issuance or incurrence of special indebtedness in the maximum principal amount provided in this part to be used to finance the cost of natural heritage projects.

Session Laws 2004-179, s. 3.2, provides: "Identification of Natural Heritage Projects. — The specific natural heritage projects for which the special indebtedness may be used are to be identified by the Trustees of the Natural Heritage Trust Fund as provided in G.S. 113-77.9, but are limited to the following projects:

"(1) Acquisition by conservation easement or fee simple up to 17,000 acres near North Carolina military bases in order to prevent encroachment by incompatible development.

"(2) Acquisition of up to 6,000 acres to expand an existing State park, provide gamelands to help protect North Carolina rivers, and provide two new State parks along North Carolina rivers; and capital improvements to an existing State park as part of its expansion."

Session Laws 2004-179, ss. 8.1 and 8.2, provide: "SECTION 8.1 It is the intent of the General Assembly that the proceeds of special indebtedness issued under parts 2 through 4 of this act shall be applied for the purposes provided in those parts, including the acquisition by conservation easement, or otherwise, of land near military bases to prevent encroachment. This acquisition shall be a high priority because of its vital importance to the State of North Carolina.

"SECTION 8.2 None of the proceeds of special indebtedness authorized by parts 2 through 4 of this act may be used to acquire any property by eminent domain."

Session Laws 2004-179, s. 8.3, contains a severability clause.

Effect of Amendments. — Session Laws 2004-179, s. 3.4, effective August 5, 2004, added subheadings in each subsection; substituted "for the following purposes" for "to acquire" in subsection (b); in subdivisions (b)(1) and (b)(2), added "To acquire" at the beginning, and added "and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes" at the end; inserted "to acquire" preceding "land" in subdivision (b)(3); and inserted subsection (b3).

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

ARTICLE 12.

General Definitions.

§ 113-129. Definitions relating to resources.

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

(1) Repealed by Session Laws 1979, c. 830, s. 1.

(1a) Animals. — Wild animals, except when the context clearly indicates a contrary interpretation.

(1b) Big Game. — Bear, wild boar, wild turkey, and white-tailed deer.

(1c) Birds. — Wild birds, except when the context clearly indicates a contrary interpretation.

(1d) Boating and Fishing Access Area. — An area of land providing access to public waters and which is owned, leased, controlled, or managed by the Wildlife Resources Commission.

(1e) Bushel. — A dry measure containing 2,150.42 cubic inches.

(1f) Cervid or Cervidae. — All animals in the Family Cervidae (elk and deer).

(2) Coastal Fisheries. — Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Wildlife Resources Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.

(3) Coastal Fishing. — All fishing in coastal fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.

(4) Coastal Fishing Waters. — The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. Except as provisions in this Subchapter or changes in the agreement between the Marine Fisheries Commission and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.

(5) Crustaceans. — Crustacea, specifically including crabs, lobster, and shrimp.

(5a) Deer. — White-tailed deer (Odocoileus virginianus), except when otherwise specified in this Chapter.

(5b) Farmed Cervid. — Any member of the Cervidae family, other than white-tailed deer, elk, mule deer, or black-tailed deer, that is bought and sold for commercial purposes.

(6) Fisheries Resources. — Marine and estuarine resources and such wildlife resources as relate to fish.

(7) Fish; Fishes. — All marine mammals; all shellfish; all crustaceans; and all other fishes.

(7a) Fur-bearing Animals. — Beaver, mink, muskrat, nutria, otter, skunk, and weasel; bobcat, opossum, and raccoon when lawfully taken with traps.

(7b) Game. — Game animals and game birds.

(7c) Game Animals. — Bear, fox, rabbit, squirrel, wild boar, white-tailed deer, and, except when trapped in accordance with provisions relating to fur-bearing animals, bobcat, opossum, and raccoon.

(7d) Game Birds. — Migratory game birds and upland game birds.

(8) Game Fish. — Inland game fish and such other game fish in coastal fishing waters as may be regulated by the Department.

(8a) Game Lands. — Lands owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission for public hunting, trapping, or fishing.

(9) Inland Fishing Waters. — All inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland or upstream from:

a. The dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission; or

b. North Carolina's boundary with another state.

(10) Inland Game Fish. — Those species of freshwater fish, wherever found, and migratory saltwater fish, when found in inland fishing waters, as to which there is an important element of sport in taking and which are denominated as game fish in the regulations of the Wildlife Resources Commission. No species of fish of commercial importance not classified as a game fish in commercial fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the Marine Fisheries Commission.

(10a) Joint Fishing Waters. — Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission in accordance with G.S. 113-132(e).

(11) Marine and Estuarine Resources. — All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.

(11a) Migratory Birds. — All birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds and the Migratory Bird Treaty Act, as defined and listed in Part 10 of Title 50 of the Code of Federal Regulations.

(11b) Migratory Game Birds. — Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging to the following families:

a. Anatidae (wild ducks, geese, brant, and swans);
b. Columbidae (wild doves and pigeons);
c. Gruidae (little brown cranes);
d. Rallidae (rails, coots, and gallinules); and
e. Scolopacidae (woodcock and snipe).

The Wildlife Resources Commission is authorized to modify this definition from time to time by regulations only as necessary to keep it in conformity with governing federal laws and regulations pertaining to migratory game birds.

(11c) Migratory Waterfowl; Waterfowl. — Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging to the Family Anatidae (wild ducks, geese, brant, and swans).

(11d) Nongame Animals. — All wild animals except game and fur-bearing animals.

(11e) Nongame Birds. — All wild birds except game birds.

(12) Nongame Fish. — All fish found in inland fishing waters other than inland game fish.

(12a) Repealed by Session Laws 2004-160, s. 1, effective August 2, 2004.

(12b) Repealed by Session Laws 2004-160, s. 1, effective August 2, 2004.

(12c) Overfished. — The condition of a fishery that occurs when the spawning stock biomass of the fishery is below the level that is adequate for the recruitment class of a fishery to replace the spawning class of the fishery.

(12d) Overfishing. — Fishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest.

(13) Private Pond. — A body of water arising within and lying wholly upon a single tract of privately owned land, from which fish cannot escape and into which fish cannot enter from public fishing waters at any time, except that all publicly owned ponds and lakes are classified as public fishing waters. In addition, the private owners of abutting tracts of land on which a pond not exceeding 10 acres is or has been established may by written agreement cooperate to maintain that pond as a private pond if it otherwise meets the requirements of this definition. If a copy of the agreement has been filed with the Wildlife Resources Commission and the pond in fact meets the requirements of this definition, it attains the status of private pond either 60 days after the agreement has been filed or upon the Commission's approving it as private, whichever occurs first.

(13a) Public Fishing Waters; Public Waters. — Coastal fishing waters, inland fishing waters, or both.

(13b) Public Hunting Grounds. — Privately owned lands open to the public for hunting under the terms of a cooperative agreement between the owner and the Wildlife Resources Commission.

(13c) Raptor. — A migratory bird of prey authorized under federal law and regulations for the taking of quarry by falconry.

(14) Shellfish. — Mollusca, specifically including oysters, clams, mussels, and scallops.

(14a) Sustainable harvest. — The amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished.

(14b) Upland Game Birds. — Grouse, pheasant, quail, and wild turkey.

(15) Wild Animals. — Game animals; fur-bearing animals; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened

species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provision of law or regulation administered by any other agency.

(15a) Wild Birds. — Migratory game birds; upland game birds; and all undomesticated feathered vertebrates. The Wildlife Resources Commission may by regulation list specific birds or classes of birds excluded from the definition of wild birds based upon the need for protection or regulation in the interests of conservation of wildlife resources.

(16) Wildlife. — Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity. Nothing in this definition is intended to abrogate the exclusive authority given the Department of Agriculture and Consumer Services to regulate the production and sale of pen-raised quail for food purposes.

(16a) Wildlife Refuge. — An area of land or waters owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission which is closed to the taking of some or all species of wildlife.

(17) Wildlife Resources. — All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory saltwater fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or depending upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285; 1987, c. 641, ss. 5, 6; 1991, c. 317, ss. 2, 3; c. 761, ss. 38, 39; 1993, c. 515, s. 6; 1997-142, ss. 2, 3; 1997-261, s. 80; 1997-400, s. 3.5; 1999-339, ss. 1-3; 2003-344, ss. 1-4; 2004-160, ss. 1, 2.)

Effect of Amendments. — Session Laws 2004-160, ss. 1 and 2, effective August 2, 2004, repealed subdivisions (12a) and (12b), and added subdivisions (12c), (12d), and (14a).

CASE NOTES

Cited in Malloy v. Cooper, 162 N.C. App. 504, 592 S.E.2d 17, 2004 N.C. App. LEXIS 189 (2004), cert. denied, 358 N.C. 376, 597 S.E.2d 133 (2004).

Article 14A.

Coastal and Estuarine Commercial Fishing Licenses.

§ 113-168. Definitions.

As used in this Article:

(1) "Commercial fishing operation" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used, (ii) the taking of fish under a RCGL, or (iii) the taking of fish as provided in G.S. 113-261.

(2) "Commission" means the Marine Fisheries Commission.

(3) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3a) "Immediate family" means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

(4) "License year" means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) "North Carolina resident" means a person who is a resident within the meaning of G.S. 113-130(4).

(6) "RCGL" means Recreational Commercial Gear License.

(7) "RSCFL" means Retired Standard Commercial Fishing License.

(8) "SCFL" means Standard Commercial Fishing License. (1997-400, s. 5.1; 1997-443, s. 11A.119(b); 1998-225, s. 4.9; 2001-213, s. 2; 2004-187, s. 6.)

Editor's Note. —

Session Laws 2004-187, s. 14, contains a severability clause.

Effect of Amendments. — Session Laws 2004-187, s. 6, effective August 17, 2004, added clause (iii) and made minor stylistic changes at the end of subdivision (1).

§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) **(Effective until January 1, 2006)** License or Endorsement Necessary to Take or Sell Shellfish. — It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or in quantities greater than the personal use limits set forth in subsection (i) of this section by any means without holding either a shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(a) **(Effective January 1, 2006)** Requirement. — It is unlawful for an individual to take shellfish from the public or private grounds of the State as part of a commercial fishing operation without holding either a shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(b) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

G.S. 113-169.2(a) and (h) are set out twice.

(c) Fees. — Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a North Carolina resident.

(d) **(Repealed effective January 1, 2006, by Session Laws 2004-187, s. 3)** License Available for Inspection. — It is unlawful for any individual to take shellfish in quantities greater than the personal use limits set forth in subsection (i) of this section from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(f) Name or Address Change. — In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. — It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) **(Effective until January 1, 2006)** Exemption. — Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(h) **(Effective January 1, 2006)** Exemption. — Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's, or guardian's shellfish license or a parent's, grandparent's, or guardian's shellfish endorsement of a SCFL.

(i) **(Repealed effective January 1, 2006 by Session Laws 2004-187, s. 3)** Taking Shellfish Without a License for Personal Use. —

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:
   a. One bushel of oysters per day.
   b. One-half bushel of scallops per day.
   c. One hundred clams per day.
   d. Ten conchs per day.
   e. One hundred mussels per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:
   a. Two bushels of oysters per day.
   b. One bushel of scallops per day.
   c. Two hundred clams per day.
   d. Twenty conchs per day.
   e. Two hundred mussels per day. (1997-400, s. 5.1; 1998-225, s. 4.17; 2001-213, s. 2; 2004-187, s. 3.)

Subsections (a) and (h) Set Out Twice. — The first version of subsections (a) and (h) set out above are effective until January 1, 2006. The second version of subsections (a) and (h) set out above are effective January 1, 2006.

Editor's Note. —

Session Laws 2004-187, s. 14, contains a severability clause.

Effect of Amendments. — Session Laws 2004-187, s. 3, effective January 1, 2006, rewrote subsection (a); repealed subsection (d); substituted "grandparents, or guardian's shellfish license or a parent's grandparent's, or guardian's shellfish endorsement of a SCFL" for "grandparent's or guardian's shellfish license" in subsection (h); and repealed subsection (i).

§ 113-173. Recreational Commercial Gear License.

(a) License Required. — Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. — It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. —

(1) The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(2) A person who holds a RCGL may use up to 100 yards of gill net to take fish for recreational purposes. Two persons who each hold a RCGL and who are fishing from a single vessel may use up to a combined 200 yards of gill net to take fish for recreational purposes. No more than 200 yards of gill net may be used to take fish for recreational purposes from a single vessel regardless of the number of persons aboard the vessel who hold a RCGL.

(d) Purchase; Renewal. — A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. — The provisions of G.S. 113-168.1(h) apply to this section.

(f) Duration; Fees. — The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. — It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. — A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. — The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. —

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) **(Repealed effective January 1, 2006, by Session Laws 2004-187, s. 4)** A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL.

(5) A person may take fish for recreational purposes by means of a gig without holding a RCGL. (1997-400, s. 5.1; 1997-456, s. 55.7; 1998-225, s. 4.21; 1999-209, s. 9; 2000-139, s. 1; 2001-213, s. 2; 2003-340, s. 1.2; 2004-187, s. 4.)

Editor's Note. —
Session Laws 2004-187, s. 14, is a severability clause.

Effect of Amendments. —
Session Laws 2004-187, s. 4, effective January 1, 2006, repealed subdivision (j)(4).

Article 14B.

Saltwater Fishing Licenses.

(Effective January 1, 2006)

§ 113-174. (Effective January 1, 2006) Definitions.

As used in this Article:

(1) "Commission" means the Marine Fisheries Commission.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, by any means:

a. That does not constitute a commercial fishing operation as defined in G.S. 113-168.

b. Except as provided in G.S. 113-261.

(5) "SFL" means Saltwater Fishing License. (2004-187, s. 2.)

Editor's Note. — Session Laws 2004-187, s. 15, made this Article effective January 1, 2006.

Session Laws 2004-187, the preamble provides: "Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

"Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that saltwater fishing is a source of great personal enjoyment and satisfaction; and

"Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

"Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State, nation, and world, and thereby properly earn a livelihood; and

"Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

"Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; and

"Whereas, the General Assembly is Committed to the Continued viability of both recreational and commercial fishing industries in the state; and

"Whereas, the General Assembly finds that it is essential to the success of efforts to better manage fishery resources that both the recreational and commercial fishing sectors are involved in and support these efforts; Now, therefore,

"The General Assembly of North Carolina enacts:"

Session Laws 2004-187, ss. 12(a)-(e), provide: "(a) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall develop a plan for the implementation of Section 2 of this act. The plan shall provide that:

"(1) Licenses may be purchased or renewed via mail, electronic mail, the Internet, or telephone.

"(2) The licensing and renewal system shall be fully automated and shall allow for the purchase or

"(3) The licensing system shall not require individuals to hold a physical license.

"(4) Verification of licensure shall be accomplished by an individual providing only the individual's name and residence address.

"(b) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall determine a date by which the plan developed pursuant to subsection (a) of this section would be fully implemented.

"(c) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall study issues related to the establishment of a unified recreational fishing license for recreational fishing in both the inland and coastal fishing waters of the State. The Board shall make specific findings as to whether a unified licensing system should be adopted for recreational fishing in the State and, if so, what the system should be and how it should be implemented.

"(d) A report on the implementation plan, the determination of the date of full implementation, and the unified fishing license study required by subsections (a), (b), and (c) of this section shall be submitted to the Joint Legislative Commission on Seafood and Aquaculture no later than April 15, 2005.

"(e) Notwithstanding the provisions of G.S. 113-175.2 as enacted by Section 1 of this act, the requirement that members of the Board of Trustees of the North Carolina Saltwater Fishing Fund must have purchased a current Saltwater Fishing License at the time of appointment and the requirement that members of the Board of Trustees must continue to have a current Saltwater Fishing License in order to remain eligible to serve on the Board of Trustees shall not apply until such time as the Saltwater Fishing License becomes available."

Session Laws 2004-187, s. 14, contains a severability clause.

§ 113-174.1. (Effective January 1, 2006) General provisions governing licenses.

(a) License Purchase Required to Engage in Recreational Fishing. — It is unlawful for any individual to engage in recreational fishing in coastal fishing waters without having purchased a current license required by this Article. It is unlawful for any individual to engage in recreational fishing without

complying with the provisions of this Article and rules adopted by the Commission under this Article.

(b) Sale of Fish Prohibited. — A license issued under this Article does not authorize an individual who takes or lands any species of fish under the authority of the Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. — It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article.

(d) General Enforcement. — It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(e) Enforcement for Charterboats and Headboats. — An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.

(f) Cancellation. — The Division may cancel a license issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance.

(g) Reporting Requirements. — A person licensed under this Article shall comply with the biological data sampling and survey programs of the Commission and the Division. (2004-187, s. 2.)

§ 113-174.2. (Effective January 1, 2006) Saltwater Fishing License.

(a) License Required. — Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.

(b) Purchase; Renewal. — Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.

(c) Types of SFLs; Fees; Duration. — The Division shall issue the following SFLs:

(1) One-year SFL. — $15.00. This license is valid for a period of one year from the date of issuance.

(2) Two-year SFL. — $30.00. This license is valid for a period of two years from the date of issuance.

(3) Three-year SFL. — $45.00. This license is valid for a period of three years from the date of issuance.

(4) Seven-day SFL. — $1.00. This license is valid for a period of seven consecutive days. An individual may purchase this license only once in any 12-month period.

(5) Subsistence SFL. — An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.

(6) Lifetime SFL. — This license is valid for the lifetime of the licensee. The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:

a. Younger than six years of age	$100.00
b. Six years of age to younger than 11 years of age	$150.00
c. 11 years of age to younger than 18 years of age	$200.00
d. 18 years of age or older	$500.00

(d) Exemptions. — An individual may engage in recreational fishing by means of recreational gear without having purchased a SFL if the individual is 18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent. (2004-187, s. 2.)

Article 14C.

North Carolina Saltwater Fishing Fund.

§ 113-175. Definitions.

As used in this Article:

(1) "Board of Trustees" means the Board of Trustees of the Fund.

(2) "Fund" means the North Carolina Saltwater Fishing Fund.

(3) "Investment income" means interest earned from the investment of license revenues and the proceeds of any gifts, grants, or contributions deposited in the Fund.

(4) "License revenues" means the net proceeds from the sale of Saltwater Fishing Licenses issued under G.S. 113-174.2. The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made. (2004-187, s. 1.)

Editor's Note. — Session Laws 2004-187, s. 15, made this Article effective August 17, 2004.

The preamble to Session Laws 2004-187 provides: "Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

"Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that saltwater fishing is a source of great personal enjoyment and satisfaction; and

"Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

"Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State, nation, and world, and thereby properly earn a livelihood; and

"Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

"Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; and

"Whereas, the General Assembly is committed to the continued viability of both recreational and commercial fishing industries in the State; and

"Whereas, the General Assembly intends that the commercial fishing industry be allowed

to continue to take fish by means of all methods traditionally employed in commercial fishing operations, including the use of nets and trawls, subject to federal and State law and rules adopted by the Marine Fisheries Commission pursuant to G.S. 143B-289.52; and

"Whereas, the General Assembly finds that in order to protect coastal fishery resources, it is essential that the recreational as well as the commercial fishing sectors provide data on use of fishery resources for the development of scientifically valid plans to manage fishery resources; and

"Whereas, the General Assembly finds that it is essential to the success of efforts to better manage fishery resources that both the recreational and commercial fishing sectors are involved in and support these efforts; Now, therefore,

"The General Assembly of North Carolina enacts:"

Session Laws 2004-187, s. 14, contains a severability clause.

§ 113-175.1. North Carolina Saltwater Fishing Fund.

There is hereby established the North Carolina Saltwater Fishing Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Fund is to enhance the fishery resources of the State for commercial and recreational fishing. License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund. The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (2004-187, s. 1.)

§ 113-175.2. Board of Trustees of the North Carolina Saltwater Fishing Fund.

(a) Board of Trustees Established. — There is hereby established the Board of Trustees of the North Carolina Saltwater Fishing Fund. The Board of Trustees shall be independent, but for administrative purposes shall be located under the Department of Environment and Natural Resources.

(b) Membership; Qualifications. — The Board of Trustees shall consist of 11 members as follows:

(1) One individual appointed by the Governor, who has purchased a current Saltwater Fishing License at the time of the appointment.

(2) One individual appointed by the Governor, who has purchased a current Saltwater Fishing License at the time of the appointment.

(3) One individual appointed by the Governor, who has purchased a current Saltwater Fishing License at the time of the appointment.

(4) One individual appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(5) One individual appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(6) One individual appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(7) One individual appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(8) One individual appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(9) One individual appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(10) The Director of the Division of Marine Fisheries or the Director's designee shall serve as a nonvoting, ex officio member of the Board of Trustees.

(11) The Chair of the Marine Fisheries Commission, or the Chair's designee shall serve as a nonvoting, ex officio member of the Board of Trustees.

(c) Officers. — The Governor shall appoint a member of the Board of Trustees to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Board of Trustees shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning July 1 and ending June 30 of the following year. The Vice-Chair may serve any number of consecutive terms.

(d) Terms. — The term of office of members of the Board of Trustees appointed under subdivisions (1) through (9) of subsection (b) of this section is three years. A member appointed under subdivisions (1) through (9) of subsection (b) of this section may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (4), and (7) of subsection (b) of this section shall expire on June 30 of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), and (8) of subsection (b) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), and (9) of subsection (b) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. An individual appointed under subdivisions (1) through (9) of subsection (b) of this section must continue to have a current Saltwater Fishing License in order to remain eligible to serve on the Board of Trustees.

(e) Vacancies. — An appointment to fill a vacancy shall be for the unexpired balance of the term. If a vacancy occurs for a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122.

(f) Meetings; Frequency. — The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members. Six members of the Board of Trustees shall constitute a quorum for the transaction of business.

(g) Per Diem and Expenses. — The Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, travel, and subsistence expenses shall be paid from the Fund. (2004-187, s. 1.)

Editor's Note. — Session Laws 2004-187, s. 9, provides: "In order to establish a schedule of staggered terms of three years for the Board of Trustees of the North Carolina Saltwater Fishing Fund, the terms of members of the Board initially filling positions established by subdivisions (1), (4), and (7) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2010; the terms of members of the Board initially filling positions established by

subdivisions (2), (5), and (8) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2009; the terms of members of the Commission initially filling positions established by subdivisions (3), (6), and (9) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2008."

Session Laws 2004-187, ss. 12(a)-(e), provide: "(a) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall develop a plan for the implementation of Section 2 of this act. The plan shall provide that:

"(1) Licenses may be purchased or renewed via mail, electronic mail, the Internet, or telephone.

"(2) The licensing and renewal system shall be fully automated and shall allow for the purchase or renewal of licenses at any time, without delay.

"(3) The licensing system shall not require individuals to hold a physical license.

"(4) Verification of licensure shall be accomplished by an individual providing only the individual's name and residence address.

"(b) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall determine a date by which the plan developed pursuant to subsection (a) of this section would be fully implemented.

"(c) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall study issues related to the establishment of a unified recreational fishing license for recreational fishing in both the inland and coastal fishing waters of the State. The Board shall make specific findings as to whether a unified licensing system should be adopted for recreational fishing in the State and, if so, what the system should be and how it should be implemented.

"(d) A report on the implementation plan, the determination of the date of full implementation, and the unified fishing license study required by subsections (a), (b), and (c) of this section shall be submitted to the Joint Legislative Commission on Seafood and Aquaculture no later than April 15, 2005.

"(e) Notwithstanding the provisions of G.S. 113-175.2 as enacted by Section 1 of this act, the requirement that members of the Board of Trustees of the North Carolina Saltwater Fishing Fund must have purchased a current Saltwater Fishing License at the time of appointment and the requirement that members of the Board of Trustees must continue to have a current Saltwater Fishing License in order to remain eligible to serve on the Board of Trustees shall not apply until such time as the Saltwater Fishing License becomes available."

§ 113-175.3. Allocation of investment income of the Fund; other powers and duties.

(a) Disbursement of Funds. — The State Treasurer shall disburse investment income only upon the written direction of the Board of Trustees.

(1) The Board of Trustees may authorize the disbursement of investment income that accrues to the Fund for:

a. Resource and habitat enhancement, including, but not limited to, creation of natural nursery areas, construction of artificial reefs, restoration and enhancement of submerged aquatic vegetation, creation and restoration of oyster habitat, and acquisition of land or an interest in land that provides for the preservation of critical fisheries habitat.

b. Grants to fund fisheries management research for specifically designated species.

c. Acquisition of land or an interest in land that provides for the enhancement of fishery habitat or public access to coastal fishing waters.

d. Purchase or construction of public beach access areas and public marinas. If the Board of Trustees purchases or constructs a public marina, it may establish a boat docking fee.

e. Emergency dredging for the restoration of access to public fishing areas.

f. Establishment of scholarships for individuals pursuing degrees in marine sciences.

g. Administrative and operating expenses of the Board of Trustees.

(2) The Board of Trustees shall not authorize the disbursement of investment income that accrues to the Fund for law enforcement purposes.

(b) Applicants. — Any of the following are eligible to apply for monies from the Fund:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the conservation, preservation, or restoration of the marine resources of the State.

(c) Administrative and Operating Expenses. — No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees.

(d) Acquisition of Real Property. — The Board of Trustees may acquire real property by purchase, negotiation, gift, or devise. Any acquisition of real property by the Board of Trustees must be reviewed and approved by the Council of State and the deed for the real property subject to approval of the Attorney General before the acquisition can become effective. Nothing in this section shall allow the Board of Trustees to acquire real property by eminent domain.

(e) Real Property Management. — The Board of Trustees may designate managers or managing agencies of the real property acquired under this Article.

(f) Designation of Locations for Purchase and Renewal of Licenses. — Pursuant to G.S. 113-174.2, the Board of Trustees may designate locations at which Saltwater Fishing Licenses may be purchased and renewed.

(g) The Board of Trustees may adopt rules to implement this Article. (2004-187, s. 1.)

Editor's Note. — Session Laws 2004-187, s. 10, provides: "Notwithstanding G.S. 113-175.3, the Board of Trustees of the North Carolina Saltwater Fishing Fund may authorize disbursement and the State Treasurer may disburse up to fifty percent (50%) of the license revenues in the North Carolina Saltwater Fishing Fund during fiscal years 2005-2006 through 2015-2016."

Session Laws 2004-124, s. 12.16(b), provides: "(b) If House Bill 831, 2003 Regular Session [S.L. 2004-187], becomes law, then of the funds appropriated to the Department of Environment and Natural Resources for the 2004-2005 fiscal year, the Division of Marine Fisheries may use up to four hundred fifty thousand dollars ($450,000) to implement the provisions of House Bill 831, and notwithstanding the provisions of G.S. 113-175.3, as enacted by Section 1 of House Bill 831, the Board of Trustees of the North Carolina Saltwater Fishing Fund may use up to three hundred thousand dollars ($300,000) to implement the provisions of House Bill 831. It is the intent of the General Assembly that all of the funds appropriated under this subsection are onetime funds. Notwithstanding G.S. 113-175.3, as enacted by Section 1 of House Bill 831, the Board of Trustees shall repay all of the funds appropriated pursuant to this subsection to the General Fund by 1 July 2008.

§ 113-175.4. Report.

The Chair of the Board of Trustees shall submit to the Joint Legislative Commission on Seafood and Aquaculture by September 30 of each year a report on the Fund that shall include the source and amounts of all moneys credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year. (2004-187, s. 1.)

Editor's Note. — Session Laws 2004-187, s. 10, provides: "Notwithstanding G.S. 113-175.3, the Board of Trustees of the North Carolina Saltwater Fishing Fund may authorize disbursement and the State Treasurer may disburse up to fifty percent (50%) of the license revenues in the North Carolina Saltwater Fishing Fund during fiscal years 2005-2006 through 2015-2016."

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-182.1. Fishery Management Plans.

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.52.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.

(4) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and achieving a sustainable harvest. This subdivision shall only apply to a plan for a fishery that is overfished. This subdivision shall not apply to a plan for a fishery where the biology of the fish or environmental conditions make ending overfishing and achieving a sustainable harvest within 10 years impracticable.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint a fishery management plan advisory committee. Each fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and Aquaculture or the Environmental Review Commission, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the

species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be reviewed at least once every five years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that sustainable harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations. (1997-400, s. 3.4; 1997-443, s. 11A.119(b); 1998-212, s. 14.3; 1998-225, s. 2.1; 2001-213, s. 1; 2001-452, s. 2.1; 2004-160, ss. 3, 4.)

Effect of Amendments. — Session Laws 2004-160, ss. 3 and 4, effective August 2, 2004, rewrote subdivision (b)(3), added subdivision (b)(4), and substituted "sustainable harvest" for "optimal yield" two times in subsection (g).

Article 16.

Cultivation of Shellfish.

§ 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

(a) The General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also finds that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation.

(b) The Marine Fisheries Commission is empowered to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds.

(c) The Marine Fisheries Commission shall adopt rules to establish training requirements for persons applying for new shellfish cultivation leases. These training requirements shall be designed to encourage the productive use of shellfish cultivation leases. Training requirements established pursuant to this subsection shall not apply to an applicant who applies for a new shellfish cultivation lease if, at the time of the application, the applicant holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission. (1921, c. 132, s. 1; C.S., s. 1959(a); 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1983, c. 621, s. 2; 1987, c. 827, s. 98; 2004-150, s. 1.)

Effect of Amendments. — Session Laws 2004-150, s. 1, effective August 2, 2004, added "Legislative findings and declaration of policy;" at the beginning of the section heading; inserted the subsection (b) designation; and added subsections (a) and (c).

§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

(a) To increase the use of suitable areas underlying coastal fishing waters for the production of shellfish, the Secretary may grant shellfish cultivation leases to persons who reside in North Carolina under the terms of this section when the Secretary determines, in accordance with his duty to conserve the marine and estuarine resources of the State, that the public interest will benefit from issuance of the lease. Suitable areas for the production of shellfish shall meet the following minimum standards:

(1) The area leased must be suitable for the cultivation and harvesting of shellfish in commercial quantities.

(2) The area leased must not contain a natural shellfish bed.

(3) Cultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation.

G.S. 113-202(d) and (j) are set out twice.

(4) Cultivation of shellfish in the leased area will not impinge upon the rights of riparian owners.

(5) The area leased must not include an area designated for inclusion in the Department's Shellfish Management Program.

(6) The area leased must not include an area which the State Health Director has recommended be closed to shellfish harvest by reason of pollution.

(b) The Secretary may delete any part of an area proposed for lease or may condition a lease to protect the public interest with respect to the factors enumerated in subsection (a) of this section. The Secretary may not grant a new lease in an area heavily used for recreational purposes.

(c) No person, including a corporate entity, or single family unit may acquire and hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under shellfish cultivation leases.

(d) **(Effective until July 1, 2005)** Any person desiring to apply for a lease must make written application to the Secretary on forms prepared by the Department containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a map or diagram made at the expense of the applicant, showing the area proposed to be leased.

The map or diagram must conform to standards prescribed by the Secretary concerning accuracy of map or diagram and the amount of detail that must be shown. If on the basis of the application information and map or diagram the Secretary deems that granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary or his authorized agent to determine whether the area proposed to be leased is consistent with the standards in subsection (a) and any other applicable standards under this Article and the rules of the Marine Fisheries Commission. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall deny the application or propose that a conditional lease be issued that is consistent with the applicable standards. In the event the Secretary authorizes amendment of the application, the applicant must furnish a new map or diagram meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of one hundred dollars ($100.00).

(d) **(Effective July 1, 2005)** Any person desiring to apply for a lease must make written application to the Secretary on forms prepared by the Department containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a map or diagram made at the expense of the applicant, showing the area proposed to be leased.

(d1) **(Effective July 1, 2005)** The map or diagram must conform to standards prescribed by the Secretary concerning accuracy of map or diagram and the amount of detail that must be shown. If on the basis of the application information and map or diagram the Secretary deems that granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary or his authorized agent to determine whether the area proposed to be leased is consistent with the standards in subsection (a) of this section and any other applicable standards under this Article and the rules of the Marine Fisheries Commis-

G.S. 113-202(d) and (j) are set out twice.

sion. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall deny the application or propose that a conditional lease be issued that is consistent with the applicable standards. In the event the Secretary authorizes amendment of the application, the applicant must furnish a new map or diagram meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of two hundred dollars ($200.00).

(e) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural shellfish bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking shellfish from the natural bed.

(f) Within a reasonable time after receipt of an application that complies with subsection (d), the Secretary shall notify the applicant of the intended action on the lease application. If the intended action is approval of the application as submitted or approval with a modification to which the applicant agrees, the Secretary shall conduct a public hearing in the county where the proposed leasehold lies. The Secretary must publish at least two notices of the intention to lease in a newspaper of general circulation in the county in which the proposed leasehold lies. The first publication must precede the public hearing by more than 20 days; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date, hour and place of the hearing.

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary. The Secretary shall make the final agency decision in a contested case.

(h) Repealed by Session Laws 1993, c. 466, s. 1.

(i) After a lease application is approved by the Secretary, the applicant shall submit to the Secretary a survey of the area approved for leasing and define the bounds of the area approved for leasing with markers in accordance with the rules of the Commission. The survey shall conform to standards prescribed by the Secretary concerning accuracy of survey and the amount of detail to be shown. When an acceptable survey is submitted, the boundaries are marked and all fees and rents due in advance are paid, the Secretary shall execute the lease on forms approved by the Attorney General. The Secretary is authorized, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining contiguous leases without increasing the total area leased.

(j) **(Effective until July 1, 2005)** Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of April following

G.S. 113-202(d) and (j) are set out twice.

the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years effective from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of fifty dollars ($50.00). The rental for initial leases is one dollar ($1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after said date, the rental is five dollars ($5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar ($1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(j) **(Effective July 1, 2005)** Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of July following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of one hundred dollars ($100.00). The rental for initial leases is one dollar ($1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of July following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after that date, the rental is ten dollars ($10.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of July must be paid in advance at the rate of one dollar ($1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(k) Except as restricted by this Subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 30 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Secretary of such fact. Such transfer is not valid until notice is furnished the Secretary. In the event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the lease.

(*l*) Upon receipt of notice by the Secretary of any of the following occurrences, he must commence action to terminate the leasehold:

(1) Failure to pay the annual rent in advance.

(2) Failure to file information required by the Secretary upon annual remittance of rental or filing false information on the form required to accompany the annual remittance of rental.

(3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.

(4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.

(5) Failure to utilize the leasehold on a continuing basis for the commercial production of shellfish.

(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.

(7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.

(8) Failure to comply with the training requirements established by the Marine Fisheries Commission pursuant to G.S. 113-201(c).

(*l*1) The Marine Fisheries Commission is authorized to make rules defining commercial production of shellfish, based upon the productive potential of particular areas climatic or biological conditions at particular areas or particular times, availability of seed shellfish, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of shellfish harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Marine Fisheries Commission under the provisions of this subsection, his leasehold shall not be terminated under subdivision (5) of subsection (*l*) of this section.

(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. The Secretary shall make the final agency decision of all lease terminations. Where the leaseholder does not initiate a contested case, or the Secretary's final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the Secretary's final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

(n) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and rules governing use of public grounds generally. Within 30 days of final termination of the leasehold, the former leaseholder shall remove all abandoned markers denominating the area of the leasehold as a private bottom. The State may, after 10 days' notice to the owner of the abandoned markers thereof, remove the abandoned structure and have the area cleaned up. The cost of such removal and cleanup shall be payable by the owner of the abandoned markers and the State may bring suit to recover the costs thereof.

(o) Every year between January 1 and February 15 the Secretary must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, and the amount of harvest gathered. Such forms may contain other pertinent questions relating to the

utilization of the leasehold in the best interests of the shellfish culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a Class 1 misdemeanor.

(p) All leases and renewal leases granted after the effective date of this Article are made subject to this Article and to reasonable amendment of governing statutes, rules of the Marine Fisheries Commission, and requirements imposed by the Secretary or his agents in regulating the use of the leasehold or in processing applications of rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Secretary. No increase in rentals, however, may be given retroactive effect.

The General Assembly declares it to be contrary to public policy to the oyster and clam bottoms which were leased prior to January 1, 1966, and which are not being used to produce oysters and clams in commercial quantities to continue to be held by private individuals, thus depriving the public of a resource which belongs to all the people of the State. Therefore, when the Secretary determines, after due notice to the lessee, and after opportunity for the lessee to be heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's failure to make diligent effort to produce oysters and clams in commercial quantities, the Secretary may decline to renew, at the end of the current term, any oyster or clam bottom lease which was executed prior to January 1, 1966. The lessee may appeal the denial of the Secretary to renew the lease by initiating a contested case pursuant to G.S. 150B-23. In such contested cases, the burden of proof, by the greater weight of the evidence, shall be on the lessee.

(q) Repealed by Session Laws 1983, c. 621, s. 16. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C.S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1; 1971, c. 447; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; 1983, c. 601, ss. 1-3; c. 621, ss. 4-16; 1985, c. 275, ss. 1-3; 1987, c. 641, s. 16; c. 773, s. 11; c. 827, s. 98; 1989, c. 423, s. 2; c. 727, s. 99; 1991 (Reg. Sess., 1992), c. 788, s. 2; 1993, c. 466, s. 1; c. 539, s. 840; 1994, Ex. Sess., c. 24, s. 14(c); 2004-150, ss. 2, 3, 4.)

Subsections (d) and (j) Set Out Twice. — The first version of subsections (d) and (j) set out above are effective until July 1, 2005. The second version of subsections (d) and (j) set out above are effective July 1, 2005.

Editor's Note. — Session Laws 2004-150, s. 8, provided that section 4, which amended subsections (*l*) and (*l*1), is effective August 2, 2004. It further provides that sections 2 and 3, which amended subsections (d) and (j) are effective July 1, 2005.

Effect of Amendments. — Session Laws 2004-150, ss. 2, 3 and 4, inserted the subsection (d1) designation; in subsection (d1), inserted "of this section" after "subsection (a)" and substituted "two hundred dollars ($200.00)" for "one hundred dollars ($100.00)" in the last sentence; and in subsection (j), substituted "July" for "April" in the first, fourth and last sentences, deleted "effective" following "ten years" in the second sentence, substituted "one hundred dollars ($100.00)" for "fifty dollars ($50.00)" in the third sentence, and substituted "said" for "that" and "ten dollars ($10.00)" for "five dollars ($5.00)" in the fifth sentence, added subdivision (*l*)(8); inserted the subsection (*l*1) designation; and in the last sentence of subsection (*l*1), deleted "of this paragraph" preceding "of this subsection" and substituted "subsection (*l*) of this section" for "this subsection" at the end of the sentence.

For effective dates, see Editor's note.

§ 113-202.1. Water column leases for aquaculture.

(a) To increase the productivity of leases for shellfish culture issued under G.S. 113-202, the Secretary may amend shellfish cultivation leases to authorize use of the water column superjacent to the leased bottom under the terms of this section when he determines the public interest will benefit from amendment of the leases. Leases with water column amendments must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Marine Fisheries Commission through duly adopted rules.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

(1) Aquaculture use of the leased area must not significantly impair navigation;

(2) The leased area must not be within a navigation channel marked or maintained by a state or federal agency;

(3) The leased area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the leaseholder, such as trawling or seining;

(4) Aquaculture use of the leased area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access; and

(5) Any additional standards, established by the Commission in duly adopted rules, to protect the public interest in coastal fishing waters.

(c) The Secretary shall not amend shellfish cultivation leases to authorize use of the water column unless:

(1) The leaseholder submits an application, accompanied by a nonrefundable application fee of one hundred dollars ($100.00), which conforms to the standards for lease applications in G.S. 113-202(d) and the duly adopted rules of the Commission;

(2) The proposed amendment has been noticed consistent with G.S. 113-202(f);

(3) Public hearings have been conducted consistent with G.S. 113-202(g);

(4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Secretary as commercially feasible forms of aquaculture which will enhance shellfish production on the leased area;

(5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and

(6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

(d) **(Effective until July 1, 2005)** Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of five years or the remainder of the term of the lease, whichever is shorter. The annual rental for an initial water column amendment is one hundred dollars ($100.00) an acre for each of the first four years for which the amendment is issued and five hundred dollars ($500.00) an acre for the fifth year for which the amendment is issued. The annual rental for a renewed water column amendment is five hundred dollars ($500.00) an acre. If a year for which a water column amendment is issued is less than a 12-month period, the rental for that year shall be prorated based on the number of months in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202.

(d) **(Effective July 1, 2005)** Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of five years or the

G.S. 113-202.1(d) is set out twice.

remainder of the term of the lease, whichever is shorter. The annual rental for a new or renewal water column amendment is one hundred dollars ($100.00) an acre. If a water column amendment is issued for less than a 12-month period, the rental shall be prorated based on the number of months remaining in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202.

(e) Amendments of shellfish cultivation leases to authorize use of the water column are subject to termination in accordance with the procedures established in G.S. 113-202 for the termination of shellfish cultivation leases. Additionally, such amendments may be terminated for unauthorized or unlawful interference with the exercise of public trust rights by the leaseholder, agents and employees of the leaseholder.

(f) Amendments of shellfish cultivation leases to authorize use of the water column are not transferrable except when the Secretary approves the transfer after public notice and hearing consistent with subsection (c) of this section.

(g) After public notice and hearing consistent with subsection (c) of this section, the Secretary may renew an amendment, in whole or in part, when the leaseholder has produced commercial quantities of shellfish and has otherwise complied with the rules of the Commission. Renewals may be denied or reduced in scope when the public interest so requires. Appeal of renewal decisions shall be conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates established in subsection (d) of this section.

(h) The procedures and requirements of G.S. 113-202 shall apply to proposed amendments or amendments of shellfish cultivation leases considered under this section except more specific provisions of this section control conflicts between the two sections.

(i) To the extent required by demonstration or research aquaculture development projects, the Secretary may amend existing leases and issue leases that authorize use of the bottom and the water column. Demonstration or research aquaculture development projects may be authorized for two years with no more than one renewal and when the project is proposed or formally sponsored by an educational institution which conducts research or demonstration of aquaculture. Production of shellfish with a sales value in excess of one thousand dollars ($1,000) per acre per year shall constitute commercial production. Demonstration or research aquaculture development projects shall be exempt for the rental rate in subsection (d) of this section unless commercial production occurs as a result of the project. (1989, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 4; c. 1024, s. 22; 1993, c. 322, s. 1; c. 466, s. 2; 2004-150, s. 5.)

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 2005. The second version of subsection (d) set out above is effective July 1, 2005.

Effect of Amendments. — Session Laws 2004-150, s. 5, effective July 1, 2005, rewrites subsection (d).

§ 113-210. Under Dock Oyster Culture.

(a) Under Dock Oyster Culture Permit. — An Under Dock Oyster Culture Permit authorizes the holder of the permit to attach up to 90 square feet of oyster cultivation containers to a dock or pier owned by the permit holder.

(b) Application. — The owner of a dock or pier who wishes to obtain an Under Dock Oyster Culture Permit shall apply to the Director of the Division of Marine Fisheries.

(c) Issuance. — The Director of the Division of Marine Fisheries shall issue an Under Dock Oyster Culture Permit only if the Director determines all of the following:

(1) That the dock or pier is not located in an area that the State Health Director has recommended be closed to shellfish harvest due to pollution or that has been closed to harvest by statute, rule, or proclamation due to suspected pollution.

(2) That the owner of the dock or pier has satisfied the training requirements established by the Marine Fisheries Commission pursuant to subsection (j) of this section.

(3) That the attachment of the oyster cultivation containers to the dock or pier will be compatible with all lawful uses by the public of other marine and estuarine resources. Other lawful public uses include, but are not limited to, navigation, fishing, and recreation.

(d) Duration. — An Under Dock Oyster Culture Permit is valid for a one-year period from the date of issuance.

(e) Renewal. — The Director of the Division of Marine Fisheries shall renew an Under Dock Oyster Culture Permit only if the Director determines the requirements of subsection (c) of this section continue to be satisfied and the holder of the permit is attempting to utilize the permit to cultivate oysters on a continuing basis.

(f) Reporting Requirements. — The holder of an Under Dock Oyster Culture Permit shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division of Marine Fisheries.

(g) Posting of Signs. — The holder of an Under Dock Oyster Culture Permit shall post signs that indicate the presence of the oyster cultivation containers and that the oyster cultivation containers and their contents are private property.

(h) Sale of Oysters Prohibited. — It is unlawful for the holder of an Under Dock Oyster Culture Permit to sell oysters cultivated pursuant to the permit.

(i) Assignment and Transfer Prohibited. — An Under Dock Oyster Culture Permit is not assignable or transferable.

(j) Oyster Cultivation Training Requirements. — The Marine Fisheries Commission, in consultation with the Sea Grant College Program at The University of North Carolina, shall develop and adopt rules for the training of individuals who cultivate oysters pursuant to this section.

(k) Revocation of Permit. — If the Director of the Division of Marine Fisheries determines that the holder of an Under Dock Oyster Culture Permit has failed to comply with any provision of this section, the Director shall revoke the Permit. The owner of the dock or pier shall remove the oyster cultivation containers that were authorized by the revoked permit within 15 days of revocation. (2004-124, s. 12.7B.)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-124, s. 33.6, made this section effective July 1, 2004.

Article 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

§ 113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and rules.

(a) The Wildlife Resources Commission must prepare and distribute to license agents informational materials relating to hunting, fishing, trapping, and boating laws and rules administered by the Wildlife Resources Commission. The materials furnished an agent should be appropriate to the types of licenses the agent customarily handles, and in a quantity reasonably anticipated to be sufficient to meet the needs of licensees obtaining licenses from the agent.

(b) In issuing new licenses and permits from the Raleigh office by mail, the Wildlife Resources Commission must generally inform the licensee or permittee of governing provisions of law and rules applicable to the type of license or permit secured. In issuing renewal licenses and permits by mail, the Wildlife Resources Commission must inform the licensee or permittee of any substantial changes in the law or rules that may affect the activities of the licensee or permittee.

(c) After adopting rules that impose new restrictions upon the activities of members of the public who do not normally hold licenses or permits to engage in the activity in question, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions. These steps may include press releases to the media, informing local authorities, and other forms of communication that give promise of reaching the segment of the public affected.

(d) After adopting new restrictions on hunting, fishing, trapping, or boating at a time other than when usual annual changes in the rules affecting those activities are adopted, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions in a manner designed to reach persons who may be affected.

(e) Repealed by Session Laws 1987, c. 827, s. 9. (1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 10; 1987, c. 827, s. 9; 2004-195, s. 1.1.)

Effect of Amendments. — Session Laws 2004-195, s. 1.1, effective August 17, 2004, substituted "rules" for "regulations" in the section heading, and in subsections (a), (b), and (d); substituted "the agent" for "he" in subsection (a); and substituted "rules that" for "regulations which" in subsections (b) and (c).

§ 113-307.1. Legislative assent to specific federal acts.

(a) The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the

acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 Stat. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this subsection shall be construed as conveying the ownership of wildlife from the State of North Carolina or permit the trapping, hunting, or transportation of any game animals, game or nongame birds, or fish by any person, including any agency, department, or instrumentality of the United States or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of this Subchapter and its implementing regulations. Provided, that the provisions of G.S. 113-39 apply with respect to licenses.

Any person, including employees or agents of any department or instrumentality of the United States, violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

(b) The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public Law 415, 75th Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Wildlife Resources Commission.

(c) Assent is hereby given to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be directed for any other purpose than the administration of the Wildlife Resources Commission and for the protection, propagation, preservation, and investigation of fish and wildlife.

(d) If as a precondition to receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Wildlife Resources Commission is directed to make such arrangements for separate accounting within the Wildlife Resources Fund, or for separate funding, as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. This subsection applies whether the cooperative program is with a public or private agency and whether the Wildlife Resources Commission acts alone on behalf of the State or in conjunction with some other State agency. (1915, c. 205; C.S., s. 2099; 1939, c. 79, ss. 1, 2; 1979, c. 830, s. 1; 1993, c. 539, s. 867; 1994, Ex. Sess., c. 24, s. 14(c); 2004-199, s. 3.)

Effect of Amendments. — Session Laws 2004-199, s. 3, effective August 17, 2004, substituted "Secretary of the Interior" for "Secretary of Agriculture" near the middle of subsection (b).

Chapter 113A.

Pollution Control and Environment.

Article 4.

Sedimentation Pollution Control Act of 1973.

Sec.
113A-67. Annual Report.

Article 7.

Coastal Area Management.

Part 3. Areas of Environmental Concern.

113A-115.1. Limitations on erosion control structures.

Article 16.

Conservation Easements Program.

113A-235. Conservation easements.

Article 17.

Conservation, Farmland, And Open Space Protection And Coordination.

Sec.
113A-241. State to Preserve One Million Acres; Annual Report.

Article 18.

Clean Water Management Trust Fund.

113A-253. Clean Water Management Trust Fund: established.
113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.

Article 1.

Environmental Policy Act.

§ 113A-1. Title.

Editor's Note. —
Session Laws 2003-435, 2nd Ex. Sess., s. 1.2.(c), provides: "Site development funded by money appropriated under this section is not subject to Article 8 of Chapter 143 of the General Statutes (public contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts), except where public funds are expended the provisions of G.S. 143-48 and G.S. 143-128.2 shall apply. Actions involving expenditures of public moneys or use of public lands for projects and programs involved in site development funded by money appropriated under this section are exempt from the requirements of Article 1 of Chapter 113A of the General Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8."

§ 113A-8. Major development projects.

Editor's Note. —
Session Laws 2003-435, 2nd Ex. Sess., s. 1.2(c), provides: "Site development funded by money appropriated under this section is not subject to Article 8 of Chapter 143 of the General Statutes (public contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts), except where public funds are expended the provisions of G.S. 143-48 and G.S. 143-128.2 shall apply. Actions involving expenditures of public moneys or use of public lands for projects and programs involved in site development funded by money appropriated under this section are exempt from the requirements of Article 1 of Chapter 113A of the General Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8."

Article 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-50. Short title.

Cross References. — For requirements necessitated by temporary implementation of federal Phase II Stormwater Management and the Stormwater Management Rules, see notes under G.S. 143-214.7.

Expand Express Review Pilot Program. — Session Laws 2004-124, s. 12.9(a)-(f) provides: "(a) The Department of Environment and Natural Resources shall continue the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 that was implemented in the Wilmington and Raleigh regional offices and shall expand the Express Review Pilot Program to two additional regional offices within the Department, to be selected by the Department based on the Department's determination of where the Pilot Program is most needed.

"(b) The Department of Environment and Natural Resources shall continue and support the eight positions that were authorized under Section 11.4A of S.L. 2003-284 to administer the expanded Express Review Pilot Program under this section. This expanded Program and these positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(c) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support may be funded for the 2004-2005 fiscal year from funds appropriated in this act to the Department of Environment and Natural Resources for this purpose. It is the intent of the General Assembly that these positions and support be funded in future fiscal years from the Express Review Fund.

"(d) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(e) No later than March 1, 2005, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the continued Express Pilot Review Program and whether it recommends that the Program be continued or expanded and any other findings or recommendations, including any legislative proposals, that it deems pertinent.

"(f) Subsection (c) of this section becomes effective January 1, 2005. The remaining subsections of this section become effective July 1, 2004."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 113A-67. Annual Report.

The Department shall report to the Environmental Review Commission on the implementation of this Article on or before 1 October of each year. The Department shall include in the report an analysis of how the implementation of the Sedimentation Pollution Control Act of 1973 is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include a review of the effectiveness of local erosion and sedimentation control programs. (2004-195, s. 2.1.)

Editor's Note. — Session Laws 2004-195, s. 8, made this section effective August 17, 2004.

Session Laws 2004-195, s. 2.6 provides: "The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 2.1 of this act, to the Environmental Review Commission on or before 1 October 2005. The Drought Management Advisory Council shall submit the first report required by G.S. 143-355.1, as enacted by Section 2.5 of this act, to the Secretary of Environment and Natural Resources, the

Governor, and the Environmental Review Commission on or before 1 October 2005."

Article 5.

North Carolina Appalachian Trails System Act.

§ 113A-73. Policy and purpose.

CASE NOTES

Applied in Clark Stone Co. v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 594 S.E.2d 832, 2004 N.C. App. LEXIS 726 (2004).

§ 113A-75. Assistance under this Article with the National Trails System Act (PL 90-543).

CASE NOTES

Cited in Clark Stone Co. v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 594 S.E.2d 832, 2004 N.C. App. LEXIS 726 (2004).

Article 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-100. Short title.

Cross References. — For requirements necessitated by temporary implementation of federal Phase II Stormwater Management and the Stormwater Management Rule, see the notes under G.S. 143-214.7.

Temporary Unvegetated Beach Areas Designated on Certain Oceanfront Areas of Hatteras Island. — Session Laws 2004-1, s. 1, expiring when a permanent rule making the designation becomes effective, provides that: "For purposes of implementing Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to that Article and notwithstanding any provision of that Article or those rules to the contrary, there are hereby designated as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002, was destroyed as a result of Hurricane Isabel on 18 September 2003, and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until stable, natural vegetation is reestablished or until the area is permanently designated as an unvegetated beach area pursuant to 15A NCAC 07H.0304(4)(a)."

Pilot program for designation of new urban waterfront areas. — Session Laws 2004-117, s. 1, expiring July 1, 2010, provides: "The General Assembly finds that:

"(1) Development in coastal areas should occur in a manner that will conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values.

"(2) New urban waterfront development, which combines residential, commercial, and recreational uses in a publicly accessible, pedestrian-friendly traditional neighborhood community that preserves natural shorelines and other critical areas, has the potential to benefit the environment and quality of life in the area in which the development occurs.

"(3) The greatest potential benefit of new urban waterfront development lies in coastal counties that do not border the Atlantic Ocean and that are less densely populated than counties that, because of their proximity to ocean beaches, have experienced greater economic development."

Session Laws 2004-117, s. 2, expiring July 1, 2010, provides: "For purposes of this act:

"(1) 'Commission' means the Coastal Resources Commission.

"(2) 'New urban waterfront area' means an area designated for development that includes a mixture of residential and commercial uses, recreational areas, and facilities for governmental or other civic purposes; provides for pedestrian access to residential, commercial, civic and recreational areas; and incorporates open space for recreational and other public purposes."

Session Laws 2004-117, s. 3(a), expiring July 1, 2010, provides: "The Commission shall implement a pilot program under which a county may designate an area as a new urban waterfront area under the Coastal Area Management Act of 1974. The purpose of the pilot is to determine the water quality and other environmental impacts from a new urban waterfront area development and to evaluate the benefits from the development to the area in which the development is located. To implement the pilot, the Commission shall consider and act on a request from a county to approve an amendment to its land-use plan that designates a new urban waterfront area outside the corporate limits of any municipality. For purposes of the pilot program, a request to approve an amendment to a land-use plan that designates a new urban waterfront area shall be approved by the Commission for only one county. The new urban waterfront area shall be located in a county that does not border the Atlantic Ocean and that has a population density of not more than 150 persons per square mile as determined by the 2000 census by the Bureau of the Census. The new urban waterfront area shall not exceed 500 acres and shall not include more than one mile of natural shoreline. The new urban waterfront area may be located in an area that drains to existing public trust waters or may be located in an area that drains to an artificially created body of water accessible to the public by navigation from public trust waters. The new urban waterfront area shall not be located in an area that, at the time that the Commission approves the amendment to the county land-use plan that designates the new urban waterfront area, drains directly to waters:

"(1) Classified by the Environmental Management Commission as Outstanding Resource Waters, Nutrient Sensitive Waters, High Quality Waters, or SA Waters.

"(2) Designated by the Marine Fisheries Commission as primary or secondary nursery areas.

"(3) Designated by the Wildlife Resources Commission or the Department of Agriculture and Consumer Services as critical habitat areas."

Session Laws 2004-117, s. 3(b), expiring July 1, 2010, provides: "A developer, pursuant to the Coastal Area Management Act of 1974 and rules adopted by the Commission to implement the Act, may submit an application for a major development permit for development in a new urban waterfront area. The new urban waterfront area development shall be subject to all of the following:

"(1) The development shall be located in a new urban waterfront area designated in a county land-use plan approved by the Commission as provided in subsection (a) of this section.

"(2) The new urban waterfront area development shall be accessible to the general public and shall provide for public access to the shoreline consistent with the county's public access plan.

"(3) The new urban waterfront area development shall be served by centrally operated water, sewer, and stormwater management systems. Wastewater and stormwater management systems for the new urban waterfront area development shall not discharge directly to estuarine or public trust waters.

"(4) The new urban waterfront area development shall comply with all standards adopted by the Commission for development in coastal wetlands, public trust areas, and estuarine waters except as those standards are modified for urban waterfronts in rules adopted by the Commission. Development within a designated new urban waterfront area shall be authorized to the same extent and shall be subject to the same use standards and permitting requirements as development within areas designated as urban waterfronts under the rules of the Commission, except that the new urban waterfront area development shall comply with the 30-foot buffer requirement set out in 15A NCAC 7H.0209(d)(10) along all natural shorelines.

"(5) The developer of the new urban waterfront area development shall submit an application for a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management and shall obtain the permit prior to commencement of any construction of a new urban waterfront area development. The National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall address the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The National Pollutant

Discharge Elimination System (NPDES) permit for stormwater management shall apply to the new urban waterfront area and to all other areas within the same common plan of development. The application for the National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall be reviewed by two independent experts approved by the Department. This review shall be conducted at the expense of the applicant. The permit shall require that the permittee establish and maintain water quality monitoring systems and conduct water quality monitoring at the locations and in the detail and frequency specified by the permit. The permittee shall submit the water quality samples collected pursuant to the permit to a laboratory certified by the Division of Water Quality of the Department of Environment and Natural Resources. The permittee shall report the data collected to the Division of Water Quality of the Department of Environment and Natural Resources.

"(6) In addition to the requirements of subdivision (5) of this subsection, the developer shall comply with any other applicable requirements related to stormwater management.

"(7) If the new urban waterfront area development authorized by this act as built within six years of the date of issuance of the major development permit fails to include commercial development, civic development, and open space substantially in accordance with the development proposed in the application for the major development permit, the developer shall provide mitigation for encroachment into riparian buffers that would otherwise be required under standards adopted by the Commission for development on public trust and estuarine shorelines."

Session Laws 2004-117, s. 4, provides: "In order to determine whether additional new urban waterfront area developments should be allowed, and whether rules governing the developments should be modified, the Coastal Resources Commission shall evaluate the impacts on water quality and other environmental impacts from the new urban waterfront area development authorized by this act and evaluate the costs and benefits from the development to the area in which the development is located. The Coastal Resources Commission shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2005. The Coastal Resources Commission shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2010."

Part 3. Areas of Environmental Concern.

§ 113A-115.1. Limitations on erosion control structures.

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to (i) any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to 1 July 2003 or (ii) any permanent erosion control structure that was originally constructed prior to 1 July 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation. This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a

variance granted by the Commission prior to 1 July 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced. (2003-427, s. 3; 2004-195, s. 1.2; 2004-203, s. 43.)

Effect of Amendments. — Session Laws 2004-195, s. 1.2, effective August 17, 2004, substituted "control" for "coastal" in subsection (b).

Session Laws 2004-203, s. 43, effective August 17, 2004, substituted "control" for "coastal" in the last sentence of subsection (b).

Part 4. Permit Letting and Enforcement.

§ 113A-116. Local government letter of intent.

Expand Express Review Pilot Program. — Session Laws 2004-124, s. 12.9(a)-(f), provides: "(a) The Department of Environment and Natural Resources shall continue the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 that was implemented in the Wilmington and Raleigh regional offices and shall expand the Express Review Pilot Program to two additional regional offices within the Department, to be selected by the Department based on the Department's determination of where the Pilot Program is most needed.

"(b) The Department of Environment and Natural Resources shall continue and support the eight positions that were authorized under Section 11.4A of S.L. 2003-284 to administer the expanded Express Review Pilot Program under this section. This expanded Program and these positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(c) The Department of Environmentand Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support may be funded for the 2004-2005 fiscal year from funds appropriated in this act to the Department of Environment and Natural Resources for this purpose. It is the intent of the General Assembly that these positions and support be funded in future fiscal years from the Express Review Fund.

"(d) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(e) No later than March 1, 2005,the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the continued Express Pilot Review Program and whether it recommends that the Program be continued or expanded and any other findings or recommendations, including any legislative proposals, that it deems pertinent.

"(f) Subsection (c) of this section becomes effective January 1, 2005. The remaining subsections of this section become effective July 1, 2004."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 16.

Conservation Easements Program.

§ 113A-235. Conservation easements.

(a) Acquisition and Protection of Conservation Easements. — Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act, and conservation easements under the Conservation Reserve Enhancement Program. The Department of Environment and Natural Resources shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected ecosystems. Soil and water conservation districts established under Chapter 139 of the General Statutes may acquire easements under the Conservation Reserve Enhancement Program by purchase or gift.

(b) Conveyance of Conservation Lands. — The Department may convey real property or an interest in real property that has been acquired for conservation in perpetuity to a federal agency, State agency, a local government, or a private nonprofit conservation organization in accordance with State law governing the conveyance of real property. The grantee of real property or an interest in real property shall manage and maintain the real property or interest in real property for the purposes set out in subsection (a) of this section. When conveying real property or an interest in real property under this subsection, the Department shall retain a possibility of reverter, a right of entry, or other appropriate property interest to ensure that the real property or interest in real property will continue to be managed and maintained in a manner that protects ecological systems and the appropriate public use of these systems.

(c) Report. — The Department shall report on the implementation of this Article to the Environmental Review Commission no later than 1 October of each year. The Department shall maintain an inventory of all conservation easements held by the Department. The inventory shall be included in the report required by this subsection. (1997-226, s. 6; 1997-443, s. 11A.119(b); 1999-329, s. 6.3; 2002-155, s. 5; 2004-195, s. 2.2.)

Effect of Amendments. — Session Laws 2004-195, s. 2.2, effective August 17, 2004, substituted "October" for "November" in subsection (c).

Article 17.

Conservation, Farmland, And Open Space Protection And Coordination.

§ 113A-241. State to Preserve One Million Acres; Annual Report.

(a) The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009. These lands shall be protected by acquisition in fee simple or by acquisition of perpetual conservation easements by public conservation orga-

nizations or by private entities that are organized to receive and administer lands for conservation purposes.

(b) The Secretary of Environment and Natural Resources shall lead the effort to add one million acres to the State's protected lands and shall plan and coordinate with other public and private organizations and entities that are receiving and administering lands for conservation purposes.

(c) The Secretary of Environment and Natural Resources shall report to the Governor and the Environmental Review Commission on or before 1 October of each year on the State's progress towards attaining the goal established in this section. (2000-23, ss. 2, 3; 2001-452, s. 2.2; 2004-195, s. 2.3.)

Effect of Amendments. — Session Laws 2004-195, s. 2.3, effective August 17, 2004, substituted "October" for "September" in subsection (c).

Article 18.

Clean Water Management Trust Fund.

§ 113A-253. Clean Water Management Trust Fund: established.

(a) Fund Established. — There is established a Clean Water Management Trust Fund in the State Treasurer's Office that shall be used to finance projects to clean up or prevent surface water pollution in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. — Moneys from the Fund are appropriated annually and may be used for any of the following purposes:

(1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and urban drinking water supplies and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(5) To repair failing waste treatment systems if: (i) an application has first been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and the application was denied during the latest review cycle; (ii) the repair is a reasonable remedy for resolving an existing waste treatment problem; and (iii) the repair is not for the purpose of expanding the system to accommodate future

anticipated growth of a community. Priority shall be given to economically distressed units of local government.

(6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand waste treatment systems if the system is being expanded as a remedy to eliminate failing septic tank systems or illegal drainage connections. Priority shall be given to economically distressed units of local government.

(7) To improve stormwater controls and management practices.

(8) To facilitate planning that targets reductions in surface water pollution.

(9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. — No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2001-424, s. 32.17; 2003-340, s. 1.3; 2004-179, s. 4.4.)

Clean Water Conservation. — Session Laws 2004-179, part 4, authorizes the issuance or incurrence of special indebtedness in the maximum principal amount provided in the part to be used to finance the cost of clean water projects.

Session Laws 2004-179, s. 4.2, provides: "Identification of Clean Water Projects. — The specific clean water projects for which the special indebtedness may be used are to be identified by the Clean Water Management Trust Fund Board of Trustees as provided in G.S. 113A-256(j), but are limited to the following projects:

"(1) Acquisition by conservation easement or fee simple up to 17,000 acres near North Carolina military bases in order to prevent encroachment by incompatible development.

"(2) Acquisition of up to 6,000 acres to expand an existing State park, provide gamelands to help protect North Carolina rivers, and provide two new State parks along North Carolina rivers; and capital improvements to an existing State park as part of its expansion."

Editor's Note. — Session Laws 2004-124, s. 6.31(a), provides: "Notwithstanding G.S. 113A-253, for the 2004-2005 fiscal year only, the Board of Trustees of the Clean Water Management Trust Fund may allocate up to four million one hundred thousand dollars ($4,100,000) to match federal, State, local, and private farmland preservation and forestland preservation funds and to acquire permanent conservation easements on working farms and forests."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-179, ss. 8.1 and 8.2, provide: "8.1 It is the intent of the General Assembly that the proceeds of special indebtedness issued under parts 2 through 4 of this act shall be applied for the purposes provided in those parts, including the acquisition by conservation easement, or otherwise, of land near military bases to prevent encroachment. This acquisition shall be a high priority because of its vital importance to the State of North Carolina.

"8.2 None of the proceeds of special indebtedness authorized by parts 2 through 4 of this act may be used to acquire any property by eminent domain."

Session Laws 2004-179, s. 8.3, is a severability clause.

Effect of Amendments. —

Session Laws 2004-179, s. 4.4, effective August 5, 2004, inserted "are appropriated annually and" preceding "may be used" in subsection (c); added "and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes" at the end of subdivisions (c)(1)-(c)(4).

§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.

(a) Allocate Grant Funds. — The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. — The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

(1) The significant enhancement and conservation of water quality in the State.

(2) The objectives of the basinwide management plans for the State's river basins and watersheds.

(3) The promotion of regional integrated ecological networks insofar as they affect water quality.

(4) The specific areas targeted as being environmentally sensitive.

(5) The geographic distribution of funds as appropriate.

(6) The preservation of water resources with significant recreational or economic value and uses.

(7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

(c) Develop Additional Guidelines. — The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. — The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. — The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. — The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. — The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. — The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) Repealed by Session Laws 1999-237, s. 15.11, effective July 1, 1999.

(j) Debt. — Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or

incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a), (c); 1999-237, s. 15.11; 2003-340, s. 1.3; 2004-179, s. 4.5.)

Clean Water Conservation. — Session Laws 2004-179, part 4, authorizes the issuance or incurrence of special indebtedness in the maximum principal amount provided in the part to be used to finance the cost of clean water projects. Session Laws 2004-179, s. 4.2 provides: "Identification of Clean Water Projects. — The specific clean water projects for which the special indebtedness may be used are to be identified by the Clean Water Management Trust Fund Board of Trustees as provided in G.S. 113A-256(j), but are limited to the following projects:

"(1) Acquisition by conservation easement or fee simple up to 17,000 acres near North Carolina military bases in order to prevent encroachment by incompatible development.

"(2) Acquisition of up to 6,000 acres to expand an existing State park, provide gamelands to help protect North Carolina rivers, and provide two new State parks along North Carolina rivers; and capital improvements to an existing State park as part of its expansion."

Session Laws 2004-179, ss. 8.1 and 8.2, provide: "SECTION 8.1 It is the intent of the General Assembly that the proceeds of special indebtedness issued under parts 2 through 4 of this act shall be applied for the purposes provided in those parts, including the acquisition by conservation easement, or otherwise, of land near military bases to prevent encroachment. This acquisition shall be a high priority because of its vital importance to the State of North Carolina.

"SECTION 8.2 None of the proceeds of special indebtedness authorized by parts 2 through 4 of this act may be used to acquire any property by eminent domain."

Session Laws 2004-179, s. 8.3, is a severability clause.

Effect of Amendments. —

Session Laws 2004-179, s. 4.5, effective August 5, 2004, added subsection (j).

Chapter 114.

Department of Justice.

Article 4.

State Bureau of Investigation.

Part 2. Criminal History Record Checks.

Sec.
114-19.50. The National Crime Prevention and Privacy Compact.

Article 7.

Methamphetamine Watch Program.

Sec.
114-43. Methamphetamine Watch Program — good faith actions immune from civil and criminal liability.

Article 4.

State Bureau of Investigation.

Part 2. Criminal History Record Checks.

§ 114-19.50. The National Crime Prevention and Privacy Compact.

The National Crime Prevention and Privacy Compact is enacted into law and entered into with all jurisdictions legally joining in the compact in the form substantially as set forth in this section, as follows:

Preamble.

Whereas, it is in the interest of the State to facilitate the dissemination of criminal history records from other states for use in North Carolina as authorized by State law; and

Whereas, the National Crime Prevention and Privacy Compact creates a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes; and

Whereas, the compact provides for the organization of an electronic information-sharing system among the federal government and the states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment; and

Whereas, under the compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and party states for authorized purposes; and

Whereas, the FBI shall manage the federal data facilities that provide a significant part of the infrastructure for the system; and

Whereas, entering into the compact would facilitate the interstate and federal-state exchange of criminal history information to streamline the processing of background checks for noncriminal justice purposes; and

Whereas, release and use of information obtained through the system for noncriminal justice purposes would be governed by the laws of the receiving state; and

Whereas, entering into the compact will provide a mechanism for establishing and enforcing uniform standards for record accuracy and for the confidentiality and privacy interests of record subjects.

Article I.
Definitions.

As used in this compact, the following definitions apply:

(1) "Attorney General" means the Attorney General of the United States.

(2) "Compact officer" means:

a. With respect to the federal government, an official so designated by the director of the FBI; and

b. With respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular, full-time employee of the repository.

(3) "Council" means the compact council established under Article VI.

(4) "Criminal history record repository" means the State Bureau of Investigation's Division of Criminal Information.

(5) "Criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release. The term does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

(6) "Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) "Criminal justice agency" means: (i) courts; and (ii) a governmental agency or any subunit of an agency that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice. The term includes federal and state inspector general offices.

(8) "Criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) "Direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(10) "Executive order" means an order of the President of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "III system" means the interstate identification index system, which is the cooperative federal-state system for the exchange of criminal history records. The term includes the national identification index, the national fingerprint file, and, to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

(13) "National fingerprint file" means a database of fingerprints or of other uniquely personal identifying information that relates to an arrested or charged individual and that is maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(14) "National identification index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.
(15) "National indices" means the national identification index and the national fingerprint file.
(16) "Noncriminal justice purposes" means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.
(17) "Nonparty state" means a state that has not ratified this compact.
(18) "Party state" means a state that has ratified this compact.
(19) "Positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, does not constitute positive identification.
(20) "Sealed record information" means:
a. With respect to adults, that portion of a record that is:
1. Not available for criminal justice uses;
2. Not supported by fingerprints or other accepted means of positive identification; or
3. Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and
b. With respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.
(21) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article II.
Purposes.

The purposes of this compact are to:
(1) Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;
(2) Require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;
(3) Require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;
(4) Provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the

effective and proper operation of the III system for noncriminal justice purposes; and

(5) Require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

Article III.
Responsibilities of Compact Parties.

(a) The director of the FBI shall:

(1) Appoint an FBI compact officer who shall:

a. Administer this compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

b. Ensure that compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the Department of Justice and federal agencies and other agencies and organizations referred to in sub-subdivision (a)(1)a. of this Article III; and

c. Regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(2) Provide to federal agencies and to state criminal history record repositories criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:

a. Information from nonparty states; and

b. Information from party states that is available from the FBI through the III system but is not available from the party states through the III system;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV and ensure that the exchange of records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) Each party state shall:

(1) Appoint a compact officer who shall:

a. Administer this compact within that state;

b. Ensure that compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

c. Regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) Establish and maintain a criminal history record repository, which shall provide:

a. Information and records for the national identification index and the national fingerprint file; and

b. The state's III system-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) Participate in the national fingerprint file; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the criminal justice services set forth in this compact.

(c) In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(d) Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes. Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

Article IV.
Authorized Record Disclosures.

(a) To the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), the FBI shall provide on request criminal history records, excluding sealed record information, to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General to ensure that the state statute explicitly authorizes national indices checks.

(b) The FBI, to the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records, excluding sealed record information, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the Attorney General to ensure that the state statute explicitly authorizes national indices checks.

(c) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures consistent with this compact and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records and shall:

(1) Ensure that records obtained under this compact are used only by authorized officials for authorized purposes;

(2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, that an appropriate "no record" response is communicated to the requesting official.

Article V.
Record Request Procedures.

(a) Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.

(c) Each request for criminal history record checks utilizing the national indices made under federal authority must be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which the request originated. Direct access to the national identification index by entities other than the FBI and state criminal history record repositories may not be permitted for noncriminal justice purposes.

(d) A state criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e)(1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under subdivision (e)(1) of this Article V, the FBI positively identifies the subject as having a III system-indexed record or records:

a. The FBI shall so advise the state criminal history record repository; and

b. The state criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

Article VI.
Establishment of Compact Council.

(a) There is established a council to be known as the compact council which has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes. The council shall:

(1) Continue in existence as long as this compact remains in effect;

(2) Be located, for administrative purposes, within the FBI; and

(3) Be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(b) The council must be composed of 15 members, each of whom must be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a two-year term, who must be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states must be eligible to serve on an interim basis;

(2) Two at-large members, nominated by the director of the FBI, each of whom shall serve a three-year term, of whom:

a. One must be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

b. One must be a representative of the noncriminal justice agencies of the federal government;

(3) Two at-large members, nominated by the chair of the council once the chair is elected pursuant to subsection (c) of this Article VI, each of whom shall serve a three-year term, of whom:

a. One must be a representative of state or local criminal justice agencies; and

b. One must be a representative of state or local noncriminal justice agencies;

(4) One member who shall serve a three-year term and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board; and

(5) One member, nominated by the director of the FBI, who shall serve a three-year term and who must be an employee of the FBI.

(c) From its membership, the council shall elect a chair and a vice-chair of the council. Both the chair and vice-chair of the council: (i) must be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chair may be an at-large member and (ii) shall serve two-year terms and may be reelected to only one additional two-year term. The vice-chair of the council shall serve as the chair of the council in the absence of the chair.

(d) The council shall meet at least once each year at the call of the chair. Each meeting of the council must be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at the meeting. A majority of the council or any committee of the council shall constitute a quorum of the council or of a committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) The council shall make available for public inspection and copying at the council office within the FBI and shall publish in the federal register any rules, procedures, or standards established by the council.

(f) The council may request from the FBI reports, studies, statistics, or other information or materials that the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide assistance or information upon a request.

(g) The chair may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

Article VII.
Ratification of Compact.

This compact takes effect upon being entered into by two or more states as between those states and the federal government. When additional states subsequently enter into this compact, it becomes effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the executing state.

Article VIII.
Miscellaneous Provisions.

(a) Administration of this compact may not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) Nothing in this compact may require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Nothing in this compact may diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544) or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(a), regarding the use and dissemination of criminal history records and information.

Article IX.
Renunciation.

(a) This compact shall bind each party state until renounced by the party state.

(b) Any renunciation of this compact by a party state must:

(1) Be effected in the same manner by which the party state ratified this compact; and

(2) Become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

Article X.
Severability.

The provisions of this compact must be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or to the Constitution of the United States or if the applicability of any phrase, clause, sentence, or provision of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of the compact to any government, agency, person, or circumstance may not be affected by the severability. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact must remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Article XI.
Adjudication of Disputes.

(a) The council:

(1) Has initial authority to make determinations with respect to any dispute regarding:

a. Interpretation of this compact;

b. Any rule or standard established by the council pursuant to Article VI; and

c. Any dispute or controversy between any parties to this compact; and

(2) Shall hold a hearing concerning any dispute described in subdivision (a)(1) of this Article XI at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. The decision must be published pursuant to the requirements of Article VI(e).

(b) The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, to maintain system policy and standards, to protect

the accuracy and privacy of records, and to prevent abuses until the council holds a hearing on the matters.

(c) The FBI or a party state may appeal any decision of the council to the Attorney General and after that appeal may file suit in the appropriate district court of the United States that has original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court must be removed to the appropriate district court of the United States in the manner provided by section 1446 of Title 28, United States Code, or other statutory authority. (2003-214, s. 2; 2004-199, s. 28.)

Effect of Amendments. — Session Laws 2004-199, s. 28, effective August 17, 2004, substituted "subsection (c)" for "subsection (c)(3)" in subdivision (b)(3) of Article VI.

Article 7.

Methamphetamine Watch Program.

§ 114-43. Methamphetamine Watch Program — good faith actions immune from civil and criminal liability.

Anyone who, in good faith, does any of the acts listed in subdivisions (1) through (3) of this section as part of a Methamphetamine Watch Program approved by the Department of Justice is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action. In any proceeding involving liability, good faith is presumed. The actions for which immunity is granted under this section are as follows:

(1) The person files a report with a law enforcement agency concerning the purchase or theft of ingredients used to manufacture methamphetamine.

(2) The person cooperates in any law enforcement investigation concerning the manufacture of methamphetamine.

(3) The person testifies in any judicial proceeding concerning the manufacture of methamphetamine. (2004-178, s. 9.)

Editor's Note. — Session Laws 2004-178, s. 10, made this section effective August 3, 2004.

Session Laws 2004-178, s. 10 provides: "Sections 1 through 6 of this act and Section 8 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. Section 7 of this act becomes effective January 1, 2005. The remainder of this act is effective when it becomes law, at which time the Commission for Health Services may adopt rules under Section 7 of this act."

Chapter 115C.

Elementary and Secondary Education.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

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115C-264. (Effective August 1, 2005) Operation.

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115C-296.3. [Expired.]
115C-302.1. Salary.

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115C-325. System of employment for public school teachers.

SUBCHAPTER VII. FISCAL AFFAIRS.

Article 32B.

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115C-472.5. Creation of the Fund; administration.

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115C-522. Provision of equipment for buildings.

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SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

Article 39.

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Part 1. Private Church Schools and Schools of Religious Charter.

115C-548. Attendance; health and safety regulations.
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115C-556. Attendance; health and safety regulations.
115C-557. Standardized testing requirements.
115C-558. High school competency testing.

Part 3. Home Schools.

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SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Definitions and Preliminary Provisions.

§ 115C-1. General and uniform system of schools.

Small School Supplemental Funding. — Session Laws 2003-284, ss. 7.7(a)-(f), as amended by Session Laws 2004-124, s. 7.9A, provides for funding for small school systems. Section 7.7(a), as amended by Session Laws 2004-124, s. 7.9A, provides in part: "Except as provided in subsection (b) of this section [s. 7.7(b) of Session Laws 2003-284], the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership of from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students." Section 7.7(a) also provides an allocation formula. Sections 7.7(b) to (f) set out further requirements, provide phase-out provisions, and provide reporting requirements.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 115C-5. Definitions.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

ARTICLE 2.

State Board of Education.

§ 115C-12. Powers and duties of the Board generally.

Healthful School Food Choices/Pilot Program. — Session Laws 2004-124, ss. 7.17(a) and (b), provide: "The State Board of Education, with he advice and assistance of The North Carolina School Food Service Association and the Academy of Family Physicians, shall develop and implement a pilot program to support the efforts of local school administrative units to provide only healthful, nutritious food choices to students. The State Board of Education shall select up to eight local school administrative units to participate in the pilot program and shall set standards for the food choices offered to students. In selecting the eight pilot units, the State Board shall give priority to those units that volunteer to be a pilot. The pilots shall be distributed geographically throughout the State.

"For the 2004-2005 school year, pilot units shall implement the program in elementary schools.

"If, at the end of the 2004-2005 school year, the State Board of Education finds that a pilot unit experienced a decrease in food service revenues because students opted not to purchase the healthful, nutritious food choices offered by the school food service, the State Board shall reimburse the unit for that decrease in revenues."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

ARTICLE 3.

Department of Public Instruction.

§ 115C-21. Powers and duties generally.

High School Workforce Development Program. — Session Laws 2004-124, ss. 7.22(a) and (b) provide: "Funds are appropriated in this act for a high school workforce development program. The purpose of the program shall be to identify students who may not plan to attend or be adequately prepared to attend a two- or four-year degree program and to provide the assistance those students need to earn an Associate Degree the year after their senior year in high school. The Department of Public Instruction shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"These funds shall be used to establish five pilot projects in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and community college curricula operate seamlessly and meet the needs of participating employers.

"The State Board of Education shall conduct an annual evaluation of this program. The evaluation shall include (i) an assessment of the overall impact of this program on student achievement, retention, and employ ability, (ii) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability, and (iii) recommendations for continuance and improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division, by September 15 of each year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provi-

sions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

ARTICLE 5.

Local Boards of Education.

§ 115C-35. How constituted.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-36. Designation of board.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-40. Board a body corporate.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-42. Liability insurance and immunity.

CASE NOTES

Exclusionary Clause of Insurance Policy Covering School Bus Liability Construed. —

When an assistant principal was sued for a student's injuries when an automobile struck the student as she walked to her school bus stop, assistant principal was entitled to summary judgment because, under G.S. 115C-42, he only waived sovereign immunity to the extent he purchased liability coverage, his insurance policy contained an exclusion of coverage for incidents arising from the use of a motor vehicle, and an exception to this exclusion for supervising students entering and exiting a school bus required the assistant principal's personal presence before his sovereign immunity was waived, and, as he was not present when the student was injured, his sovereign immunity was not waived, whether or not he changed the student's bus stop after she was assaulted on the school bus. Herring v. Liner, — N.C. App. —, 594 S.E.2d 117, 2004 N.C. App. LEXIS 422 (2004).

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.

(2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.

(3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.

(4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed under G.S. 115C-84.2.

(6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

(7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

(8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction

and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.

(9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

(10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C-301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

(11) To Determine the School Calendar. — Local boards of education shall determine the school calendar under G.S. 115C-84.2.

(12) **(For final effective date see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.

(12) **(For future effective date see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.

(15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).

(16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year and shall, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

Each local board of education shall appoint a person or establish a paperwork control committee to monitor all reports and other paperwork required of teachers by the central office.

(18a) To Adopt Rules and Policies Limiting the Noninstructional Duties of Teachers. — Local boards of education shall adopt rules and policies limiting the noninstructional duties assigned to teachers. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason the rules or policies should not be implemented. These rules and policies shall ensure that:

a. Teachers with initial certification are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to develop into skilled professionals;

b. Teachers with 27 or more years of experience are not assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties assigned to these teachers are minimized, so these teachers have an opportunity to informally share their experience and expertise with their colleagues;

c. The noninstructional duties of all teachers are limited to the extent possible given federal, State, and local laws, rules, and policies, and that the noninstructional duties required of teachers are distributed equitably among employees.

(19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302.1(i), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — Local boards shall contract for equipment and supplies under G.S. 115C-522(a) and G.S. 115C-528.

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. Replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(27) Repealed by Session Laws 1987, c. 571, s. 2.

(28) To Enter Lease Purchase and Installment Purchase Contracts. — Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. — Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(29) To Authorize the Observance of a Moment of Silence. — To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school

time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. — Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. — No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

(30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

(32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. — Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. — Each local board of education shall establish at least one alternative learning program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to

long-term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's policies and guidelines developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard.

Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.

(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).

(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. — Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1).

(34) To Encourage the Business Community to Facilitate Student Achievement. — Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

(35) To produce school building improvement reports. — Each administrative unit shall produce school building improvement reports for each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.

(36) To Report All Acts of School Violence. — Local boards of education shall report all acts of school violence to the State Board of Education in accordance with G.S. 115C-12(21).

(37) To purchase group accident and health insurance for students. — Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81.

(38) To Establish School Improvement Teams. — Local boards shall adopt a policy to ensure that each principal has established a school

improvement team under G.S. 115C-105.27 and in accordance with G.S. 115C-288(l). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together with these teams to develop, review, and amend school improvement plans for their schools.

(39) To Adopt Policies Related to Student Retention Decisions. — Local boards shall adopt policies related to G.S. 115C-45(c) that include opportunities for parents and guardians to discuss decisions to retain students.

(40) To adopt emergency response plans. — Local boards of education may adopt emergency response plans relating to incidents of school violence. These plans are not a public record as the term "public record" is defined under G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6.

(41) To Encourage Recycling in Public Schools. — Local boards of education shall encourage recycling in public schools and may develop and implement recycling programs at public schools.

(42) To Implement Guidelines to Support and Assist Students With Diabetes. — Local boards of education shall ensure that the guidelines adopted by the State Board of Education under G.S. 115C- 12(31) are implemented in schools in which students with diabetes are enrolled. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. Local boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans.

(43) Local boards of education are encouraged to adopt policies that require superintendents to assign to the core academic courses, in seventh through ninth grades, teachers who have at least four years' teaching experience and who have received within the last three years an overall rating on a formal evaluation that is at least above standard.

(44) To Ensure that Schools Provide Information Concerning Meningococcal Meningitis and Influenza and Their Vaccines. — Local boards of education shall ensure that schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; c. 738, s. 182; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b); 1989, c. 585, s. 2; c. 752, s. 65(b); 1989 (Reg. Sess., 1990), c. 1074, s. 23(b); 1991, c. 706, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(f); 1993, c. 114, s. 1; c. 321, s. 139(c); 1993 (Reg. Sess., 1994), c. 716, s. 2; c. 775, s. 5; 1995, c. 455, s. 1; c. 497, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, 17; 1997-443, s. 8.38(j)-(l);

1998-194, s. 3; 1998-202, s. 12; 1999-96, s. 7; 1999-237, s. 8.25(a); 1999-373, s. 3; 1999-397, s. 4; 1999-456, s. 35; 2000-67, s. 8.18(b); 2000-140, s. 77; 2001-424, s. 28.17(c); 2001-500, s. 3; 2001-512, s. 12; 2002-103, s. 2; 2002-178, s. 3; 2003-147, s. 4; 2004-118, s. 2; 2004-203, s. 72(b).)

Editor's Note. — For note discussing effective date of subdivision (12) as being when the components of the standard course of study have been fully incorporated and implemented as part of the Basic Education Program, see the main volume.

Session Laws 2003-147, s. 12, as amended by 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

Session Laws 2004-118, s.1, provides: "This act shall be known as 'Garrett's Law'."

Session Laws 2004-203, s. 7 provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Effect of Amendments. —

Session Laws 2004-118, s. 2, effective July 1, 2004, beginning with the 2004-2005 school year, added subdivision (44).

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.

ARTICLE 7.

Organization of Schools.

§ 115C-66. Administrative units classified.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-68.1. Merger of units by the board of commissioners.

CASE NOTES

Merger. — Session law which created a school district did not give the district authority to expand into an adjacent county when a town expanded into that county, and because the school system was located in only one county, the North Carolina State Board of Education

was not required to obtain approval from county commissioners who governed the adjacent county before it approved a plan to merge three school systems. Kings Mt. Bd. of Educ. v. N.C. State Bd. of Educ., 159 N.C. App. 568, 583 S.E.2d 629, 2003 N.C. App. LEXIS 1509 (2003).

§ 115C-69. Types of districts defined.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-74. School system defined.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

SUBCHAPTER IV. EDUCATION PROGRAM.

ARTICLE 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

Editor's Note. —

Session Laws 2004-124, ss. 5.1(aa) and (bb), provide: "(aa) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2004-2005 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds."

"(bb) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Legal Periodicals. —

For comment, "Written in Stone; Why Renewed Attempts to Post the Ten Commandments in Public Schools Will Likely Fail," see 81 N.C.L. Rev. 801 (2003).

Part 2. Calendar.

§ 115C-84.2. School calendar.

(a) School Calendar. — Each local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(1a) Repealed by Session Laws 2004-180, s. 1, effective August 9, 2004.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

(4) Five days, as designated by the local board, for use as teacher workdays. These days shall be protected to allow teachers to complete instructional and classroom administrative duties. The local school administrative unit shall not impose any additional tasks on these days. The local board shall schedule one of these days at the beginning of the school year and one at the end of each academic quarter.

(5) The remaining days scheduled by the local board in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes. Before consulting with the local board, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. In order to make up days for school closing because of inclement weather, the local board may designate any of the days in this subdivision as additional make-up days to be scheduled after the last day of student attendance.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards shall designate at least seven days scheduled under subdivisions (4) and (5) of this subsection as days on which teachers may take accumulated vacation leave. Local boards may designate the remaining days scheduled in subdivisions (4) and (5) of this subsection as days on which teachers may take accumulated vacation leave, but local boards shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.

(b) Limitations. — The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 195 days.

(2) The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veterans Day shall be a holiday for all public school personnel and for all students enrolled in the public schools.

(c) Emergency Conditions. — During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. — Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10. On a showing of good cause, the State Board of Education may waive this requirement to the extent that school calendars are able to provide sufficient days to accommodate anticipated makeup days due to school closings. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. For purposes of this subsection, the term "good cause" means that schools in any local school administrative unit in a county have been closed eight days per year during any four of the last 10 years because of severe weather conditions, energy shortages, power failures, or other emergency situations.

The State Board also may waive this requirement for an educational purpose. The term "educational purpose" means a local school administrative unit establishes a need to adopt a different calendar for (i) a specific school to accommodate a special program offered generally to the student body of that school, (ii) a school that primarily serves a special population of students, or (iii) a defined program within a school. The State Board may grant the waiver for an educational purpose for that specific school or defined program to the extent that the State Board finds that the educational purpose is reasonable, the accommodation is necessary to accomplish the educational purpose, and the request is not an attempt to circumvent the opening and closing dates set forth in this subsection. The waiver requests for educational purposes shall not be used to accommodate system-wide class scheduling preferences.

The required opening and closing dates under this subsection shall not apply to any school that a local board designated as having a modified calendar for the 2003-2004 school year or to any school that was part of a planned program in the 2003-2004 school year for a system of modified calendar schools, so long as the school operates under a modified calendar.

(e) Nothing in this section prohibits a local board of education from offering supplemental or additional educational programs or activities outside the calendar adopted under this section. (1997-443, s. 8.38(c); 1998-212, s. 9.18(b); 1999-373, s. 1; 1999-463, Ex. Sess., s. 7A; 2003-8, s. 1; 2003-131, s. 1; 2004-180, s. 1; 2004-203, s. 44.)

Editor's Note. —

Session Laws 2004-180, s. 3, provides: "For certified and noncertified employees employed on or after the effective date of this act, the annual rate of pay beginning with the 2005-2006 school year shall not be reduced as the result of this act. Furthermore, nothing in this act shall be construed to change the pay cycle for noncertified employees. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee on local compliance with this section."

Session Laws 2004-180, s. 5, provides: "Nothing in this act shall require the General Assembly to appropriate funds to implement it or require a local school administrative unit to spend additional funds to implement it."

Effect of Amendments. —

Session Laws 2004-180, s. 1, effective August 9, 2004, and applicable in all 100 counties and in all local administrative units to school years beginning with the 2005-2006 school year, substituted "215" for "220" in subsection (a); repealed subdivision (a)(1a); rewrote subdivisions (a)(4) and (a)(5); and rewrote the last paragraph; substituted "195" for "200" in subdivision (b)(1); rewrote subsection (d); and added subsection (e).

Session Laws 2004-203, s. 44, effective August 17, 2004, deleted the last paragraph of subsection (d) which read: "Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days." There is no such paragraph in subsection (d), and the apparent intent was to delete the former last paragraph in subsection (a). This section has been set out in the form above, without the amendment by 2004-203, s. 44, being effectuated, at the direction of the River of Statutes.

CASE NOTES

No Private Cause of Action. — Trial court properly dismissed the teachers' request for declaratory relief against the county school board under G.S. 115C-84.2 and G.S. 115C-301.1 because the teachers failed to plead all the facts necessary to disclose the existence of an actual controversy between the parties; furthermore, neither section expressly or implicitly created a private cause of action for the teachers. Lea v. Grier, 156 N.C. App. 503, 577 S.E.2d 411, 2003 N.C. App. LEXIS 238 (2003).

Part 3A. School Technology.

§ 115C-102.5. Commission on School Technology created; membership.

(a) There is created the Commission on School Technology. The Commission shall be located administratively in the Department of Public Instruction but shall exercise all its prescribed statutory powers independently of the Department of Public Instruction.

(b) The Commission shall consist of the following 19 members:

(1) The State Superintendent of Public Instruction or a designee;

(2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;

(3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;

(4) A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;

(5) Four members appointed by the Governor;

(6) Six members appointed by the President Pro Tempore of the Senate two of whom shall be members of the Senate. One of these six members shall be appointed by the President Pro Tempore of the Senate to serve as cochair;

(7) Six members appointed by the Speaker of the House of Representatives two of whom shall be members of the House of Representatives. One of these six members shall be appointed by the Speaker of the House of Representatives to serve as cochair; and

(8) The Secretary of Health and Human Services or a designee.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

(c) Repealed by Session Laws 1997-443, s. 8.26(a).

(d) Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowances set forth in G.S. 138-5.

(e) The Department of Public Instruction, the Department of Community Colleges, and the Office of Information Technology Services shall provide requested professional and clerical staff to the Commission. The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work. The Commission shall use an outside consultant to perform a requirements analysis for learning and instructional management technologies on a statewide basis that is based on information gathered from each local school administrative unit and that considers the needs of teachers, students, and administrators. (1993, c. 321, s. 135(a); c. 522, s. 20; 1993 (Reg. Sess., 1994), c. 591, s. 11(a); 1997-148, s. 7; 1997-443, s. 8.26(a); 1998-131, s. 7; 1998-220, s. 1; 2004-199, s. 4.)

Effect of Amendments. — Session Laws 2004-199, s. 4, effective August 17, 2004, substituted "Office of Information Technology Services" for "Office of the State Controller" in the first sentence of subsection (e).

§ 115C-102.6B. Approval of State school technology plan.

(a) The Commission shall present the State school technology plan it develops to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee for their comments prior to January 1, 1995. At least every two years thereafter, the Commission shall develop any necessary modifications to the State school technology plan and present them to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee.

(b) After presenting the plan or any proposed modifications to the plan to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee, the Commission shall submit the plan or any proposed modifications to (i) the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4), and (ii) the State Board of Education for information purposes

only. The State Board shall adopt a plan that includes the components of a plan set out in G.S. 115C-103.6A(1) through (16).

At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education.

(c) If no changes are made to the plan or the proposed modifications to the plan after the submission to the State Chief Information Officer and the State Board of Education, the plan or the proposed modifications shall take effect upon approval by the State Chief Information Officer and the State Board of Education. (1993 (Reg. Sess., 1994), c. 769, s. 19.26(b); 1997-443, s. 8.26(b); 2004-129, s. 29.)

Effect of Amendments. — Session Laws 2004-129, s. 29, effective July 1, 2004, substituted "State Chief Information Officer for" for "Information Resources Management Commission" throughout subsections (b) and (c); and made a minor stylistic change.

§ 115C-102.6C. Approval of local school system technology plans.

(a) Each local board of education shall develop a local school system technology plan that meets the requirements of the State school technology plan. In developing a local school system technology plan, a local board of education is encouraged to coordinate its planning with other agencies of State and local government, including other local school administrative units.

The Office of Information Technology Services shall assist the local boards of education in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the local boards of education in developing the instructional and technological aspects of the plan.

Each local board of education shall submit the local plan it develops to the Office of Information Technology Services for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Office of Information Technology Services and the Department of Public Instruction, shall approve all local plans that comply with the requirements of the State school technology plan.

(b) After a local school system technology plan is approved by the State Board of Education, all State funds spent by the local board of education for any aspect of school technology shall be used to implement the local school system technology plan.

(c) After a local school system technology plan is approved by the State Board of Education, the local board of education may use funds in the State School Technology Fund that are allocated to the local school administrative unit to implement the plan. (1993 (Reg. Sess., 1994), c. 769, s. 19.26(b); 2004-129, s. 30.)

Effect of Amendments. — Session Laws 2004-129, s. 30, effective July 1, 2004, substituted "Office of Information Technology Services" for "Information Resources Management Commission" throughout subsection (a).

§ 115C-102.7. Monitoring and evaluation of State and local school system technology plans; reports.

(a) The Commission shall monitor and evaluate the development and implementation of the State and local school system technology plans. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology.

(a1) Repealed by Session Laws 1997-18, s. 15(k).

(b) The Commission shall provide notice of meetings, copies of minutes, and periodic briefings to the Office of Information Technology Services. (1993, c. 321, s. 135(a); 1993 (Reg. Sess., 1994), c. 769, s. 19.26(c); 1997-18, s. 15(k); 2004-129, s. 31.)

Effect of Amendments. — Session Laws 2004-129, s. 31, effective July 1, 2004, substituted "Office of Information Technology Services" for "chair of the Information Resources Management Commission and the chair of the Technical Committee of the Information Resources Management Commission" in subsection (b).

Part 3B. Technology Alliance.

§ 115C-102.15. Business and Education Technology Alliance.

(a) There is created the State Board of Education's Business and Education Technology Alliance.

(b) The Business and Education Technology Alliance shall be composed of 27 members who have knowledge and interest in ensuring that the effective use of technology is built into the North Carolina School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century. These members shall be appointed as follows:

(1) The Superintendent of Public Instruction or his or her designee;

(2) One member of the State Board of Education appointed by the chair of the State Board of Education;

(3) One parent of a public school child appointed by the State Board of Education after receiving recommendations from the North Carolina State Parent Teacher Association;

(4) Two members of the Senate appointed by the President Pro Tempore of the Senate;

(5) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(6) One member of a local board of education who represents a local education agency (LEA) that has successfully incorporated technology into its schools, who is appointed by the Governor, after receiving recommendations from the North Carolina School Boards Association;

(7) One member of a local board of education who represents a local education agency (LEA) that has limited access to technology, who is appointed by the Governor, after receiving recommendations from the North Carolina School Boards Association;

(8) Two at-large members appointed by the Governor;

(9) One representative of business and industry appointed by the State Board of Education after receiving recommendations from the North Carolina Citizens for Business and Industry;

(10) Four members appointed by the President Pro Tempore of the Senate. In making these appointments the President Pro Tempore is encouraged to consider appointing a local school superintendent or a local school administrator who represents a local education agency that has limited access to technology, a school principal who works in a school that successfully incorporates technology into its instructional program, a school teacher who works in a school with limited access to technology, and a technology director who represents a local education agency (LEA) that has successfully incorporated technology into its schools. Professional associations representing school administrators and professional associations representing teachers may recommend appointees to the President Pro Tempore;

(11) Four members appointed by the Speaker of the House of Representatives. In making these appointments the Speaker of the House of Representatives is encouraged to consider appointing a local school superintendent or a local school administrator from a local education agency that has successfully incorporated the use of technology into its instructional programs, a school principal working in a school with limited access to technology, a school teacher who has successfully incorporated the use of technology into classroom instruction, and a technology director who represents a local education agency (LEA) that has limited access to technology. Professional associations representing school administrators and professional associations representing teachers may recommend appointees to the Speaker of the House of Representatives;

(12) One chancellor or his or her designee of institutions of higher education who has demonstrated effective and innovative use of technology for education, appointed by the Board of Governors of The University of North Carolina;

(13) One president or his or her designee of the Community College System who has demonstrated effective and innovative use of technology for education, appointed by the State Board of Community Colleges;

(14) Two county commissioners, one of whom represents a county that has successfully incorporated technology into its schools and community, who are appointed by the State Board of Education, after receiving recommendations from the North Carolina Association of County Commissioners;

(15) Two representatives of technology businesses who have either successfully developed innovative technology programs for education or have partnered with a local education agency (LEA) to develop a technology-based education environment in that LEA, who are appointed by the State Board of Education, after receiving recommendations from North Carolina Electronics and Information Technologies Association and the North Carolina Citizens for Business and Industry; and

(16) One representative of the Office of Information Technology Services appointed by the State Chief Information Officer.

(c) Each of the following organizations or agencies shall select a representative from its organization or agency to serve as a nonvoting member to the Alliance. These members shall provide information to the Alliance about technology in North Carolina: Rural Internet Access Authority; Information and Technology Services, North Carolina Department of Public Instruction; Office of State Information Technology Services, Office of the Governor.

(d) Members of the Business and Education Technology Alliance shall serve for two-year terms. All members of the Alliance shall be voting members unless

they are designated as ex officio members. The officer who made the initial appointment shall fill vacancies in the appointed membership. The member of the State Board of Education appointed to the Alliance by the chair of the State Board of Education shall serve as chair of the Alliance.

(e) Members of the Business and Education Technology Alliance shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6.

(f) The Business and Education Technology Alliance shall:

(1) Advise the State Board of Education on the development of a vision for a technologically literate citizen in 2025. This vision should contain the educational standards needed to accomplish that vision, the educational uses of technology to accomplish that vision, and a plan for educating the community, educators, and business people about the vision and educational uses of technology. The vision and the plan for educating the public about the vision may include:

a. Various models and frameworks of the high quality and effective use of technology for education purposes including those students who have not learned with traditional approaches. The models may include the Cumberland County Schools Web Academy, the Virtual High School, and Nova Net.

b. Opportunities for teachers to experience the uses of technology in work and business settings, which is the world for which they are preparing students to work.

c. Production of multimedia presentations such as videos, commercials, and publications that help citizens, students, and educators see and understand the current and future power of technology for educating our children and impacting our lives.

(2) Advise the State Board of Education on the development of a technology infrastructure, delivery, and support system that provides equity and access to all segments of the population in North Carolina. The infrastructure, delivery, and support system may include:

a. Opportunities for access to high-speed connectivity to the Internet which impacts on the quality of instruction that can be provided for students at school and in the community.

b. Technology networks that enable communities to encompass the student and his/her family while maintaining the rights to privacy for all citizens, i.e., a social service, health, education, and mental health network. This network will increase collaboration among agencies and provide a coordinated, systemic service approach.

c. Continue to evaluate the status of current technology systems and structures from the State to local level as it relates to employing technology for improving instruction.

d. Continue to provide access to technology equipment and infrastructure at home, school, and in the community such as extended hours of operation for schools and other community facilities and on-loan laptop computers for student and parent use.

e. Continue to develop surveys that provide information about the types and results of technological tools utilized by teachers, students, and others at school, in the community, and home.

f. Sufficient personnel to maintain the operation of information technology systems.

g. Coordination with regional economic development planners to position local education agencies as an integral part of economic development.

(3) Advise the State Board of Education on the development of professional development programs for teachers to successfully implement and use technology in public schools for all students. These programs should also develop their leadership skills so that they can use technology as a tool to support the rethinking of the core business of schools: student learning.

The professional development programs may include:

a. Models of staff development from the State that are considered state of the art, support the vision for technology, and that could be used by local districts to train their staffs.

b. Designated time for professional development for using technology as well as skills for using technology as a delivery for curriculum and instructional programs.Designated time for professional development for using technology as well as skills for using technology as a delivery for curriculum and instructional programs.

c. Collegial planning time so that colleagues can coach and support each other in learning new ways in which to think about instruction.

d. Teacher and administrator preparation and other programs that ensure the Department of Public Instruction's Technology Foundation Standards for Teachers and Administrators in higher education are incorporated into classroom instruction.

e. Training teachers with skill sets to teach technical courses that are in growing demand to function at home and work.

f. Increase opportunities for sharing best practices in all areas of instruction.

g. Increase opportunities for learning how to use technology to customize instruction for all students.

h. Increase opportunities for learning how to use technology to diagnose student learning.

(4) Advise the State Board of Education on the development of a Funding and Accountability system to ensure statewide access and equity. The Funding and Accountability system may include:

a. Public-private partnerships.

b. Identification of resources and the cost of those resources.

c. Funding to keep hardware/software current.

d. Evaluating progress toward realizing the technology vision.

e. Evaluating the impact of various technology initiatives on alleviating some of the State's education and economic development problems.

f. Incentives to encourage risk taking and innovative uses of technology.

g. Funding for only those initiatives that are well-planned, demonstrate high commitment, and have a solid evaluation component.

(5) Report annually to the State Board of Education on the progress of the Alliance's recommendations for education technology in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve implementing education technology in the public schools.

(6) Report annually to the Joint Legislative Education Oversight Committee in the General Assembly on the recommendations for education technology in the public schools on the first Friday in January. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve implementing education technology in the public schools. (2002-126, s. 7.27(a)-(f); 2004-129, s. 32.)

Effect of Amendments. — Session Laws 2004-129, s. 32, effective July 1, 2004, substituted "Office of Information Technology Services appointed by the State Chief Information Officer" for "Information Resource Management Commission appointed by the Commission's Chair" in subdivision (b)(16).

Article 8B.

School-Based Management and Accountability Program.

Part 3. School-Based Accountability.

§ 115C-105.35. Annual performance goals.

(a) The School-Based Management and Accountability Program shall (i) focus on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each school in the State in order to measure the growth in performance of the students in each individual school. During the 2004-2005 school year and at least every five years thereafter, the State Board shall evaluate the accountability system and, if necessary, modify the testing standards to assure the testing standards continue to reasonably reflect the level of performance necessary to be successful at the next grade level or for more advanced study in the content area.

As part of this evaluation, the Board shall, where available, review the historical trend data on student academic performance on State tests. To the extent that the historical trend data suggest that the current standards for student performance may not be appropriate, the State Board shall adjust the standards to assure that they continue to reflect the State's high expectations for student performance.

(b) For purposes of this Article, the State Board shall include a "closing the achievement gap" component in its measurement of educational growth in student performance for each school. The "closing the achievement gap" component shall measure and compare the performance of each subgroup in a school's population to ensure that all subgroups as identified by the State Board are meeting State standards.

(c) The State Board shall consider incorporating into the School-Based Management and Accountability Program a character and civic education component which may include a requirement for student councils. (1995 (Reg. Sess., 1996), c. 716, s. 3; 2001-424, s. 28.30(a); 2003-284, s. 7.40(c); 2004-124, s. 7.12(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 7.12(b), provides: "The State Board shall complete its initial evaluation and any necessary modifications to the testing standards required under G.S. 115C-105.35, as rewritten by subsection (a) of this section, so that the modified standards are in effect no later than the 2005-2006 school year."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —
Session Laws 2004-124, s. 7.12(a), effective July 1, 2004, rewrote the section.

Article 8C.

Local Plans For Alternative Schools/Alternative Learning Programs and Maintaining Safe and Orderly Schools.

§ 115C-105.45. Legislative findings.

Editor's Note. — Session Laws 2004-73, s. 1, provides: "The State Board of Education shall recommend a specified percentage of the Alternative Schools/At-Risk Student allotment to be designated for services to be provided to students who have been suspended from school for more than 10 days. The State Board of Education shall report its recommendation to the Joint Legislative Education Oversight Committee by December 15, 2004."

Session Laws 2004-76, s. 1, provides: "The State Board of Education shall develop and recommend a formula for allotting funds to alternative learning programs and alternative schools based on the number of students (i) suspended from school for more than 10 days or expelled from school and (ii) assigned to an alternative learning program or alternative school. The Board should consider as a basis for this formula existing funding formulas used for children with disabilities, academically or intellectually gifted children, and students with limited English proficiency. The State Board of Education shall recommend this formula to the Joint Legislative Education Oversight Committee by December 15, 2004."

Article 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

CASE NOTES

Statute Did Not Apply to Federally-Run School. — North Carolina standard of a free appropriate public education (FAPE) under G.S. 115C-106(a) did not apply to the autistic student's action against the school located on an air force base because the school was federally-run, and therefore, the FAPE standard under 20 U.S.C.S. § 1401(a)(18)(B) applied. G v. Fort Bragg Dependent Schs., 324 F.3d 240, 2003 U.S. App. LEXIS 5759 (4th Cir. 2003).

In an action against the Fort Bragg Dependent Schools under the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C.S. § 1400 et seq., the federal standard embodied in the IDEA, rather than North Carolina's "full potential" standard under G.S. 115C-106(a), governed the Individualized Educational Program of an autistic student in the Fort Bragg Dependent Schools; there was no clear expression of Congressional intent to subject federal entities to state free appropriate public education standards referred to in 20 U.S.C.S. § 1401(a)(18)(B) in providing education under the IDEA. G v. Fort Bragg Dependent Schs., 343 F.3d 295, 2003 U.S. App. LEXIS 17294 (4th Cir. 2003).

Factors Considered. — Where there was no evidence that statutorily required parties, under 20 U.S.C.S. § 1414(d)(1)(B), were absent during the individualized educational program (IEP) meetings, and defendant school district representatives visited the new site, gathered information, and found it was comparable and would meet plaintiff student's IEP goals, and the parents attended and participated in all meetings, and the goals of the IEP could be accomplished at the new facility, the student's claim under G.S. 115C-106 et seq. failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

CASE NOTES

Responsible Authority. — Under G.S. 115C-110(i), neither the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services nor the Department of Health and Human Services was the agency responsible for plaintiff student's educational placement or the provision of free appropriate public education, and letters from those agencies changed only the support services they provided; thus, persons outside the individualized educational programs process had not unilaterally changed the student's educational placement without following the procedures set forth by the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

Factors Considered. — Where there was no evidence that statutorily required parties, under 20 U.S.C.S. § 1414(d)(1)(B), were absent during the individualized educational program (IEP) meetings, and defendant school district representatives visited the new site, gathered information, and found it was comparable and would meet plaintiff student's IEP goals, and the parents attended and participated in all meetings, and the goals of the IEP could be accomplished at the new facility, the student's claim under G.S. 115C-110(a) failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

Article 10.

Vocational and Technical Education.

Part 1. Vocational and Technical Education Programs.

§ 115C-151. Statement of purpose.

It is the intent of the General Assembly that vocational and technical education be an integral part of the educational process. The State Board of Education shall administer through local boards of education a comprehensive program of vocational and technical education that shall be available to all students, with priority given to students in grades eight through 12, who desire it in the public secondary schools and middle schools of this State. The purposes of vocational and technical education in North Carolina public secondary schools shall be:

(1) Occupational Skill Development. — To prepare individuals for paid or unpaid employment in recognized occupations, new occupations, and emerging occupations.

(2) Preparation for Advanced Education. — To prepare individuals for participation in advanced or highly skilled vocational and technical education.

(3) Career Development; Introductory. — To assist individuals in the making of informed and meaningful occupational choices.

It is also legislative intent to authorize the State Board of Education to support appropriate vocational and technical education instruction and related services for individuals who have special vocational and technical education needs which can be fulfilled through a comprehensive vocational and technical education program as designated by State Board of Education policy or federal vocational and technical education legislation. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1987, c. 738, s. 183; 1993, c. 180, s. 3; 2004-124, s. 7.15(b).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 7.15(b), effective July 1, 2004, inserted "with priority given to students in grades eight through 12" following "students" in the second sentence of the first undesignated paragraph.

§ 115C-157. Responsibility of local boards of education.

Each local school administrative unit, shall provide free appropriate vocational and technical education instruction, activities, and services in accordance with the provisions of this Part for all youth, with priority given to youth in grades eight through 12, who elect the instruction and shall have responsibility for administering the instruction, activities, and services in accordance with federal and State law and State Board of Education policies. (1977, c. 490, s. 2; 1981, c. 423, s. 1; 1993, c. 180, s. 3; 2004-124, s. 7.15(c).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 7.15(c), effective July 1, 2004, inserted "with priority given to youth in grades eight through 12" following "for all youth" near the middle of the section.

Article 10A.

Testing.

Part 2. Statewide Testing Program.

§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. — The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving a federal grant under the Reading First Program.

(b) Competency Testing Program.

(1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.

(2) The tests shall be administered annually to all ninth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the ninth grade who are enrolled in special education

programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.

(3) The State Board of Education shall:

a. Adopt one or more nationally standardized tests or other nationally standardized equivalent measures that measure competencies in the verbal and quantitative areas; or

b. Develop and validate alternate means and standards for demonstrating minimum competence. These standards must be as difficult as the tests adopted pursuant to subdivision (1) of this subsection.

The State Board of Education shall adopt a policy to identify which students and under what circumstances students may pass one of these tests in lieu of the testing requirement of subdivision (2) of this subsection.

(3a) Students with disabilities who fail to pass the competency test adopted pursuant to subdivision (2) of this subsection after two attempts shall be given the opportunity to take and pass one of the alternate tests adopted pursuant to subdivision (3) of this subsection.

(4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section. Notwithstanding subsection (a) of this section, the State Board shall develop and implement a study allowing selected local school administrative units that volunteer to administer a standardized test in May, 12 months prior to the third grade end-of-grade test, in order to establish a baseline that will be used to measure academic growth at the end of third grade. Initially, the State Board shall select 12 volunteer local school administrative units that are diverse in geography and size to participate in the study. If the State Board determines that a standardized test administered in May, 12 months prior to the third grade end-of-grade test, is more reliable than a standardized test administered at the beginning of third grade for the purpose of measuring academic growth, the State Board may change the test date for additional local school units. The State Board shall report the results of the study to the Joint Legislative Education Oversight Committee by October 15, 2000.

Baseline measurements administered in May, 12 months prior to the third grade end-of-grade test, are not public records as provided in Chapter 132 of the General Statutes.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states. (1977, c. 522, s. 1; c. 541, s. 1; 1981, c. 423, s. 1; 1983, c. 627, s. 1; 1985, c. 409, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1987, c. 738, s. 180(a); 1987 (Reg. Sess., 1988), c. 1086, s. 77(a); 1989, c. 778, ss. 4, 5; 1995, c. 524, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 18.14; 1998-212, s. 9.15(b); 1998-220, ss. 6, 11; 2000-140, s. 21(a), (b); 2003-275, s. 1; 2004-124, ss. 7.11, 7.27.)

Editor's Note. —

Session Laws 2003-275, s. 2, as amended by Session Laws 2004-124, s. 7.27, provides: "This act becomes effective July 1, 2003. G.S. 115C-174.11(b)(3a), as created in Section 1 of this act, shall be implemented no later than the 2004-2005 school year. The State Board of Education shall adopt or develop and validate the alternate tests required under G.S. 115C-174.11(b)(3), as amended by Section 1 of this act, no later than April 15, 2005, and shall implement these alternate tests beginning with the 2005-2006 school year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 7.11, effective July 1, 2004, added "except as required as a condition of receiving a federal grant under the Reading First Program" at the end of subsection (a).

Article 16.

Optional Programs.

Part 6A. Charter Schools.

§ 115C-238.29A. Purpose.

Editor's Note. —

Session Laws 2004-124, ss. 7.25(a) and (b), provides: "(a) A charter school, prior to July 1, 2005, may adopt and present to the local board of education of the local school administrative unit in which it is located a resolution requesting funds for the construction of charter school facilities. The resolution shall describe the intended use of the funds. If the local board of education approves the request, the local board of education shall submit the charter school's request to the board of county commissioners along with the budget request for the local board of education. If the county appropriates funds for the construction of charter school facilities, the local board of education shall transfer the funds to the charter school. The local board of education shall require that the charter school account for the appropriation at the close of the fiscal year. This subsection applies only to the Mount Airy City School Administrative Unit and to Surry County. Definitions applicable to Part 6A of Article 16 of Chapter 115C of the General Statutes apply to this subsection.

"(b) If a local board of education, prior to July 1, 2005, submits a charter school's request for funds for the construction of charter school facilities to acounty in accordance with subsection (a) of this section, the county may appropriate funds for capital outlay for a charter school located in the county. Before it appropriates funds under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once a week for two consecutive weeks before the hearing in a newspaper having general circulation in the area. An ordinance appropriating funds under this section may not be adopted after June 30, 2005. No funds may be expended under this section unless the county receives a security interest in the facilities being constructed in the amount of the funds expended.

"The county shall not appropriate for charter school facilities (i) any local sales tax revenues earmarked by G.S. 105-487(a) or G.S. 105-502(a) for public school capital outlay purposes or for the retirement of debt incurred for public school capital outlay purposes or (ii) any corporate tax revenues earmarked by G.S. 115C-546.1(b) for the Public School Building Capital Fund. The ordinance making the appropriation shall state specifically what the appropriation is to be used for.

"This subsection applies only to the Mount Airy City School Administrative Unit and to Surry County. Definitions applicable to Chapter 153A of the General Statutes apply to this subsection."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the

textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 115C-238.29D. Final approval of applications for charter schools.

(a) The State Board shall grant final approval of an application if it finds that the application meets the requirements set out in this Part or adopted by the State Board of Education and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.

(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant the initial charter for a period not to exceed 10 years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed 10 years each. The State Board of Education shall review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

It shall not be considered a material revision of a charter application and shall not require the prior approval of the State Board for a charter school to increase its enrollment during the charter school's second year of operation and annually thereafter (i) by up to ten percent (10%) of the school's previous year's enrollment or (ii) in accordance with planned growth as authorized in the charter. Other enrollment growth shall be considered a material revision of the charter application, and the State Board may approve such additional enrollment growth of greater than ten percent (10%) only if the State Board finds that:

(1) The actual enrollment of the charter school is within ten percent (10%) of its maximum authorized enrollment;
(2) The charter school has commitments for ninety percent (90%) of the requested maximum growth;
(3) The board of education of the local school administrative unit in which the charter school is located has had an opportunity to be heard by the State Board of Education on any adverse impact the proposed growth would have on the unit's ability to provide a sound basic education to its students;
(4) The charter school is not currently identified as low-performing;
(5) The charter school meets generally accepted standards of fiscal management; and
(6) It is otherwise appropriate to approve the enrollment growth. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 3; 2000-67, s. 8.23; 2001-424, s. 28.26; 2003-354, s. 2; 2004-203, s. 45(a).)

Effect of Amendments. —
Session Laws 2004-203, s. 45(a), effective August 17, 2004, and applicable to charters granted or renewed on or after that date, in the first paragraph of subsection (d), substituted "10" for "five" two times, and added the last sentence. These are the same changes as those made by Session Laws 2003-354, s. 2.

§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. — A charter school shall meet the same health and safety requirements required of a local school administrative unit. The Department of Public Instruction shall ensure that charter schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

(b) School Nonsectarian. — A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. —

(1) The board of directors of a charter school may sue and be sued. The State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the charter. Any sovereign immunity of the charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school.

(d) Instructional Program. —

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter.

(e) Employees. —

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these

teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. All teachers in grades six through 12 who are teaching in the core subject areas of mathematics, science, social studies, and language arts shall be college graduates.

The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for a leave of absence to teach at a charter school, the local school administrative unit shall grant the leave for one year. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 45 days before the teacher would otherwise have to report for duty. After the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave of absence be made up to 90 days before the teacher would otherwise have to report for duty. A local board of education is not required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board under this subdivision. A teacher who has career status under G.S. 115C-325 prior to receiving a leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees. Employees of a charter school whose board of directors elects to become a participating employer under G.S. 135-5.3 are "teachers" for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. —

(1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools. These audit requirements may include the requirements of the School Budget and Fiscal Control Act.

(2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. —

(1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.

(2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.

(3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.

(4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides.

(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

(6) During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.

(7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. — The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who

lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

(i) Assets. — Upon dissolution of the charter school or upon the nonrenewal of the charter, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located.

(j) **(See Editor's Note)** Driving Eligibility Certificates. — In accordance with rules adopted by the State Board of Education, the designee of the school's board of directors shall do all of the following:

(1) Sign driving eligibility certificates that meet the conditions established in G.S. 20-11.

(2) Obtain the necessary written, irrevocable consent from parents, guardians, or emancipated juveniles, as appropriate, in order to disclose information to the Division of Motor Vehicles.

(3) Notify the Division of Motor Vehicles when a student who holds a driving eligibility certificate no longer meets its conditions. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 5; 1997-443, s. 8.19; 1997-456, s. 55.4; 1998-212, s. 9.14A(a); 1999-243, s. 8; 2001-462, s. 1; 2004-118, s. 3; 2004-203, s. 45(b).)

Editor's Note. —

Session Laws 2004-118, s. 1, provides: "This act shall be known as 'Garrett's Law'."

Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Effect of Amendments. — Session Laws 2004-118, s. 3, effective July 1, 2004, beginning with the 2004-2005 school year, added the last two sentences in subsection (a).

Session Laws 2004-203, s. 45.(b), effective August 17, 2004, and applicable to persons employed by charter schools for the 2004-2005 and subsequent school years, added the last sentence in the first paragraph of subdivision (e)(1).

Article 17.

Supporting Services.

Part 1. Transportation.

§ 115C-247. Purchase of activity buses by local boards.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-249. Purchase and maintenance of school buses, materials and supplies.

(a) To the extent that the funds shall be made available to it for such purpose, a local board of education is authorized to purchase from time to time such additional school buses and service vehicles or replacements for school buses and service vehicles, as may be deemed by such board to be necessary for the safe and efficient transportation of pupils enrolled in the schools within such local school administrative unit. Any school bus so purchased shall be constructed and equipped as prescribed by the provisions of this Article and by the regulations of the State Board of Education issued pursuant thereto.

(b) The tax-levying authorities of any county are hereby authorized to make provision from time to time in the capital outlay budget of the county for the purchase of such school buses or service vehicles.

(c) Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective local boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective local boards of education in accordance with such allocation.

(d) The title to any additional or replacement school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such local school administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of this Article in the same manner as any other public school bus.

(e) It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the board of education of any local school administrative unit in such county. It shall be the duty of the tax-levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

(f) In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the local school administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such local school administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such local school administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such local school administrative unit for such purpose.

(g) Repealed by Session Laws 2003-147, s. 3, effective for a local school administrative unit when the unit is certified as being E-Procurement compliant, or April 1, 2004, whichever occurs first.

(h) Appropriations by the General Assembly for the purchase of public school buses shall not revert to the General Fund. Any unexpended portion of

those appropriations shall at the end of each fiscal year be transferred to a reserve account and be held, together with any other funds appropriated for the purpose, for the purchase of public school buses. (1955, c. 1372, art. 21, s. 9; 1961, c. 833, s. 16; 1975, c. 879, s. 46; 1981, c. 423, s. 1; 1987, c. 827, s. 49; 1991 (Reg. Sess., 1992), c. 1039, s. 24; 2003-147, s. 3; 2004-203, s. 72(b).)

Certification as E-Procurement Compliant. — Session Laws 2003-147, ss. 10(a) through (e) contains provisions encouraging local school administrative units to use the NC E-Procurement Service for their purchasing requirements. See same catchline in note to G.S. 115C-522.

Session Laws 2003-147, s. 11, provides: "Nothing in this act [giving local boards of education additional purchasing flexibility and encouraging them to use the NC E-Procurement Service] shall be construed to limit the authority of the Department of Administration to develop, implement, and monitor a pilot program for reverse auctions for public school systems as provided in Section 3 of Chapter 107 of the 2002 Session Laws."

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act [s. 3 provided for the repeal of subsection (g)] become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

Effect of Amendments. — Session Laws 2003-147, s. 3, effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, or April 1, 2004, whichever occurs first, repealed subsection (g).

Part 2. Food Service.

§ 115C-264. (Effective until August 1, 2005) Operation.

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services. (1955, c. 1372, art.

G.S. 115C-264 is set out twice. See notes.

5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 78; 2003-147, s. 5; 2004-203, ss. 72(a), (b).)

Section Set Out Twice. — The section above is effective until August 1, 2005. For the section as amended August 1, 2005, see the following section, also numbered G.S.115C-264.

Editor's Note. —

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

Effect of Amendments. —

Session Laws 2004-203, s. 72.(a), effective August 17, 2004, substituted "Public schools are not required to comply with G.S. 115C-522(a)" for "It shall not be mandatory that the provisions of G.S. 115C-522(a) and 143-129 be complied with" in the last sentence of the last paragraph.

§ 115C-264. (Effective August 1, 2005) Operation.

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

For nutritional purposes, the public schools shall not (i) use cooking oils in their school food programs that contain trans-fatty acids or (ii) sell processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 78; 2003-147, s. 5; 2004-124, s. 7.29(a); 2004-203, ss. 72(a), (b).)

Section Set Out Twice. — The section above is effective August 1, 2005. For the section as in effect until August 1, 2005, see the preceding section, also numbered G.S. 115C-264.

Healthful School Food Choices/Pilot

Program. — Session Laws 2004-124, ss. 7.17(a) and (b), provide: "(a) The State Board of Education, with the advice and assistance of The North Carolina School Food Service Association and the Academy of Family Physicians, shall develop and implement a pilot program to support the efforts of local school administrative units to provide only healthful, nutritious food choices to students. The State Board of Education shall select up to eight local school administrative units to participate in the pilot program and shall set standards for the food choices offered to students. In selecting the eight pilot units, the State Board shall give priority to those units that volunteer to be a pilot. The pilots shall be distributed geographically throughout the State. For the 2004-2005 school year, pilot units shall implement the program in elementary schools.

"(b) If, at the end of the 2004-2005 school year, the State Board of Education finds that a pilot unit experienced a decrease in food service revenues because students opted not to purchase the healthful, nutritious food choices offered by the school food service, the State Board shall reimburse the unit for that decrease in revenues."

Editor's Notes. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 7.29(a), effective August 1, 2005, inserted the present second paragraph.

Session Laws 2004-203, s. 72.(a), effective August 17, 2004, substituted "Public schools are not required to comply with G.S. 115C-522(a)" for "It shall not be mandatory that the provisions of G.S. 115C-522(a) and 143-129 be complied with" in the last sentence of the last paragraph.

SUBCHAPTER V. PERSONNEL.

ARTICLE 18.

Superintendents.

§ 115C-276. Duties of superintendent.

CASE NOTES

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

ARTICLE 19.

Principals and Supervisors.

§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.

CASE NOTES

Assistant Principal Precluded From Bringing State Constitutional Claim. — District court's grant of summary judgment to defendants on state constitutional claims was affirmed where the plaintiff, an assistant principal, could have sought review of defendants' decision to demote her under G.S. 115C-287.1(d) instead of directly under N.C. Const. art. I, §§ 14 and 19. Love-Lane v. Martin, 355 F.3d 766, 2004 U.S. App. LEXIS 937 (4th Cir. 2004).

ARTICLE 20.

Teachers.

§ 115C-295. Minimum age and certificate prerequisites.

State Board Teacher Retention Task Force. — Session Laws 2004-161, ss. 28.1 through 28.4, provide: "The State Board of Education shall form a Task Force cochaired by the State Board of Education Chairman or designee and the Lt. Governor or designee to study issues related to effective recruitment and retention of teachers for the North Carolina public schools. The Task Force shall include practicing public school teachers, principals, superintendents, local boards of education, and representatives from the University System, the Community College System, and others as deemed appropriate by the cochairs. In the course of this study, the State Board of Education shall consider:

"(1) Impediments to effective teacher recruitment and retention;

"(2) Strategies for increasing the effectiveness or recruitment and retention efforts;

"a. Modifications to teacher salaries and benefits that will ensure that teacher compensation in North Carolina remains at or above the national average, thereby better enabling the public schools to recruit and retain highly qualified teachers. The State Board may consider:

"1. Increased salaries for beginning teachers to make the profession more attractive at the entry level;

"2. Increased salaries for teachers at those points at which higher numbers of teachers leave the teaching profession;

"3. Retirement options for teachers with 30 years of experience that will provideopportunities for those highly skilled and experienced teachers to continue in service;

"4. Differentiated salary opportunities for teachers who demonstrate exemplary teaching skills, work in certain areas of certification, work in hard-to-staff schools, or serve as mentors, school improvement team leaders, or serve as leaders in a Quality Teacher as Leader Program;

"5. Other modifications to teacher salaries and benefits necessary to recruit and retain highly qualified teachers in the public schools.

"b. Tax incentives to encourage experienced teachers to remain in the teaching profession;

"c. Locally designed initiatives to facilitate teacher recruitment and retention;

"d. Strategies for increasing the number of highly qualified beginning teachers such as:

"1. Expanding teacher preparation programs;

"2. Expanding scholarship loan programs for prospective teachers to recruit the most qualified high school students to the teaching profession; and

"3. Ensuring that graduates of teacher preparation programs are well prepared to meet teacher-certification requirements.

"e. Strategies for giving beginning teachers the opportunity to develop into skilled professionals such as assigning them to teach only in their area of certification and minimizing their noninstructional duties;

"f. Strategies for ensuring that school-based administrators are adequately trained to provide support for both experienced and inexperienced teachers and that they provide that support;

"g. Strategies for ensuring that teachers are treated respectfully by students, such as a Teachers' Bill of Rights;

"h. Increased expectations regarding parental involvement in and support of their children's education;

"i. The availability of communications devices in the classroom;

"j. Strategies for a Quality Teacher as Leader Program as a career option that compensates teachers for accomplished teaching and values teachers as leaders; and

"k. Strategies for ensuring that schools are staffed appropriately and teachers have the time necessary to meet the State, federal and local demands for quality teaching and learning environments.

"The State Board of Education shall report its findings and recommendations to the Joint Legislative Education Oversight Committee prior to February 15, 2005. These recommendations may include changes to laws and policies.

"The Department of Public Instruction shall provide staff to support the work of the Task Force upon the request of the cochairs or staff and consultants may be hired from funds designated to support the work of the Task Force.

"The State Board of Education shall use federal funds to support the work of the Task Force."

§ 115C-296. Board sets certification requirements.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes.

The State Board of Education may require an applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. The State Board of Education shall permit an applicant to fulfill any such testing requirement before or during the applicant's second year of teaching provided the applicant took the examination at least once during the first year of teaching. The State Board of Education shall make any required standard initial certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.

(a1) The State Board shall adopt policies that establish the minimum scores for any required standard examinations and other measures necessary to assess the qualifications of professional personnel as required under subsection (a) of this section. For purposes of this subsection, the State Board shall not be subject to Article 2A of Chapter 150B of the General Statutes. At least 30 days prior to changing any policy adopted under this subsection, the State Board shall provide written notice to all North Carolina schools of education and to all local boards of education. The written notice shall include the proposed revised policy.

(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, $30.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, $30.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, $55.00.

(4) Initial application for New, In-State Approved Program Graduate, $55.00.

(5) Initial application for Out-of-State certificate, $85.00.

(6) All other applications, $85.00.

The applicant must pay the fee at the time the application is submitted.

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include demonstrated competencies in the identification and education of children with learning disabilities. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

(b1) The State Board of Education shall develop a plan to provide a focused review of teacher education programs and the current process of accrediting these programs in order to ensure that the programs produce graduates that are well prepared to teach. The plan shall include the development and implementation of a school of education performance report for each teacher education program in North Carolina. The performance report shall include at least the following elements: (i) quality of students entering the schools of education, including the average grade point average and average score on preprofessional skills tests that assess reading, writing, math and other competencies; (ii) graduation rates; (iii) time-to-graduation rates; (iv) average scores of graduates on professional and content area examination for the purpose of certification; (v) percentage of graduates receiving initial certification; (vi) percentage of graduates hired as teachers; (vii) percentage of graduates remaining in teaching for four years; (viii) graduate satisfaction based on a common survey; and (ix) employer satisfaction based on a common survey. The performance reports shall follow a common format. The performance reports shall be submitted annually. The State Board of Education shall develop a plan to be implemented beginning in the 1998-99 school year to reward and sanction approved teacher education programs and masters of education programs and to revoke approval of those programs based on the performance reports and other criteria established by the State Board of Education.

The State Board also shall develop and implement a plan for annual performance reports for all masters degree programs in education and school administration in North Carolina. To the extent it is appropriated, the

performance report shall include similar indicators to those developed for the performance report for teacher education programs. The performance reports shall follow a common format.

Both plans for performance reports also shall include a method to provide the annual performance reports to the Board of Governors of The University of North Carolina, the State Board of Education, and the boards of trustees of the independent colleges. The State Board of Education shall review the schools of education performance reports and the performance reports for masters degree programs in education and school administration each year the performance reports are submitted. The State Board shall submit the performance report for the 1999-2000 school year to the Joint Legislative Education Oversight Committee by December 15, 2000. Subsequent performance reports shall be submitted to the Joint Legislative Education Oversight Committee on an annual basis by October 1.

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

(2) The State Board shall automatically revoke the certificate of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful

to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, G.S. 14-204; and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's certificate unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

(3) In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

a. The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37 or G.S. 143B-146.5; and

b. The assistance team assigned to that school makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates. In addition, the Board shall have the authority to contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the Board in the proper disposition of allegations of misconduct by certificated persons.

(e) The State Board of Education shall develop a mentor program to provide ongoing support for teachers entering the profession. In developing the mentor program, the State Board shall conduct a comprehensive study of the needs of new teachers and how those needs can be met through an orientation and mentor support program. For the purpose of helping local boards to support new teachers, the State Board shall develop and distribute guidelines which address optimum teaching load, extracurricular duties, student assignment, and other working condition considerations. These guidelines shall provide that initially certified teachers not be assigned extracurricular activities unless they request the assignments in writing and that other noninstructional duties of these teachers be minimized. The State Board shall develop and coordinate a mentor teacher training program. The State Board shall develop criteria for selecting excellent, experienced, and qualified teachers to be participants in the mentor teacher training program.

(f) The State Board of Education, after consultation with the Board of Governors of The University of North Carolina, shall develop a new category of teacher certificate known as the "Masters/Advanced Competencies" certificate. To receive this certificate, an applicant shall successfully complete a masters degree program that includes rigorous academic preparation in the subject area which the applicant will teach and in the skills and knowledge expected of a master teacher or the applicant shall demonstrate to the satisfaction of the

State Board that the candidate has acquired the skills and knowledge expected of a master teacher.

Persons who qualify for a "G" certificate prior to September 1, 2000, shall be awarded a "Masters/Advanced Competencies" certificate without meeting additional requirements. On and after September 1, 2000, no additional "G" certificates shall be awarded. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 6; 1987 (Reg. Sess., 1988), c. 1086, s. 96; 1989, c. 752, s. 66(a); 1993, c. 166, s. 1; c. 199, s. 4; 1995 (Reg. Sess., 1996), c. 716, s. 7; 1997-221, ss. 4(a), (b), 5, 7(a), 8, 9, 14, 17(a), (c); 1997-325, s. 1; 1997-383, s. 1; 1998-5, s. 5; 1998-131, s. 8; 1998-167, s. 1; 1999-96, s. 8; 2000-67, s. 9.2(a); 2001-129, s. 1; 2002-126, s. 7.39; 2003-284, s. 7.20(e); 2003-408, s. 1; 2004-124, s. 7.19(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2003-284, s. 7.20(e), effective July 1, 2003, and expiring June 30, 2004, rewrote subsection (c).

Session Laws 2004-124, s. 7.19(a), effective July 1, 2004, rewrote subsection (a); and substituted "any required standard examinations" for "the standard examinations" in the first sentence of subsection (a1).

§ 115C-296.1. (Expires September 1, 2006) Teacher shortages; certification.

(a) Notwithstanding any other law, if a local board determines there is or anticipates there will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels, then the local board may employ as teachers individuals who do not meet the State Board's requirements for initial or continuing State certification. The local board may employ an individual under this subsection for up to one year under a provisional certificate so long as:

(1) Each individual has a postsecondary degree that is at least a bachelors degree.

(2) Each individual has:

a. An out-of-State certificate authorizing the individual to teach the grade or subject to be taught and at least one year of classroom teaching experience the board considers relevant to the grade or subject to be taught;

b. At least one year of full-time classroom teaching experience as a professor, assistant professor, associate professor, instructor, or visiting lecturer at a constituent institution of The University of North Carolina, a North Carolina community college, or other institution of higher education as defined in G.S. 90-270.2(5) provided the board considers the experience relevant to the grade or subject to be taught; or

c. Three years of other experience provided the board determines that both the individual's experience and postsecondary education are relevant to the grade or subject to be taught.

(3) Each individual is eligible for re-employment by his or her prior employer.

(4) The board has developed a plan to determine the individual's competence as a teacher. The board's plan shall include a review of the performance of students taught by the individual.

(5) During the period of employment under this subsection, the board provides a mentor teacher if the individual does not have a year of classroom teaching experience.

G.S. 115C-296.1 has a delayed expiration date. See notes.

(6) During the period of employment under this subsection, the individual receives an annual evaluation and multiple observations under G.S. 115C-333(a).

(b) A local board may re-employ as a teacher an individual the board initially employed under subdivision (a)(2)a of this section. This individual is then deemed to have satisfied the academic and professional preparation required to receive an initial or continuing State teacher certificate and is not required to take and pass a standard examination to demonstrate that preparation. An individual who receives an initial or continuing State certificate under this subsection is subject to the same requirements for continuing certification and certificate renewal as other teachers who hold initial or continuing State teacher certificates.

(c) A local board may re-employ as a teacher an individual the board initially employed under subdivisions (a)(2) b and (a)(2) c of this section. If the individual, either prior to initial employment or within one year after initial employment, takes and passes any required standard examination adopted by the State Board under G.S. 115C-296(a) that is or was applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual is deemed to have satisfied the academic and professional preparation required to receive an initial State teacher certificate. An individual who receives an initial certificate under this subsection is subject to the same requirements for continuing certification as other teachers who hold initial State teacher certificates. If the individual, within one year of the initial employment, does not take and pass any required standard examination adopted by the State Board under G.S. 115C.296(a) that is applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual shall continue to hold a provisional certificate and is subject to G.S. 115C-296(c).

(d) Local boards shall report semi-annually to the State Board the number of individuals employed as teachers under each sub-subdivision of subdivision (2) of subsection (a) of this section. (1998-226, s. 1; 1999-108, s. 1; 2002-126, s. 7.24; 2004-124, s. 7.19(b).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 7.19(b), effective July 1, 2004, and expiring September 1, 2006, substituted "any required standard examination" for "the standard examination" twice in subsection (c).

§ 115C-296.3: Expired June 30, 2004, by operation of Session Laws 2003-284, s. 7.20(h).

§ 115C-302.1. Salary.

(a) Prompt Payment. — Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted teachers are paid.

(b) Salary Payments. — State-allotted teachers shall be paid for a term of 10 months. State-allotted months of employment for vocational education to local boards shall be used for the employment of teachers of vocational and technical

education for a term of employment to be determined by the local boards of education. However, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter. In addition, local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 2003-2004 school year for any school year thereafter.

Each local board of education shall establish a set date on which monthly salary payments to State-allotted teachers shall be made. This set pay date may differ from the end of the month of service. The daily rate of pay for teachers shall equal midway between one twenty-first and one twenty-second of the monthly rate of pay. Except for teachers employed in a year-round school or paid in accordance with a year-round calendar, or both, the initial pay date for teachers shall be no later than August 31 and shall include a full monthly payment. Subsequent pay dates shall be spaced no more than one month apart and shall include a full monthly payment.

Teachers may be prepaid on the monthly pay date for days not yet worked. A teacher who fails to attend scheduled workdays or who has not worked the number of days for which the teacher has been paid and who resigns, is dismissed, or whose contract is not renewed shall repay to the local board any salary payments received for days not yet worked. A teacher who has been prepaid and continues to be employed by a local board but fails to attend scheduled workdays may be subject to dismissal under G.S. 115C-325 or other appropriate discipline.

Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. The request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease the teacher's annual salary nor in any other way alter the contract made between the teacher and the local school administrative unit. Teachers employed for a period of less than 10 months shall not receive their salaries in 12 installments.

Notwithstanding this subsection, the term "daily rate of pay" for the purpose of G.S. 115C-12(8) or for any other law or policy governing pay or benefits based on the teacher salary schedule shall not exceed one twenty-second of a teacher's monthly rate of pay.

(c) Vacation. — Included within the 10-month term shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth of the annual rate for State employees for each month of employment. Local boards shall provide at least 10 days of annual vacation leave at a time when students are not scheduled to be in regular attendance. However, instructional personnel who do not require a substitute may use annual vacation leave on days that students are in attendance. Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual vacation leave days designated in the school calendar and may use those annual vacation leave days during the eleventh or twelfth month of employment.

On a day that pupils are not required to attend school due to inclement weather, but employees are required to report for a workday, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the teacher and the teacher's immediate supervisor or principal. On a day that school is closed to employees and pupils due to inclement weather, a teacher shall work on the scheduled makeup day.

All vacation leave taken by the teacher will be upon the authorization of the teacher's immediate supervisor and under policies established by the local

board of education. Annual vacation leave shall not be used to extend the term of employment.

Notwithstanding any provisions of this subsection to the contrary, no person shall be entitled to pay for any vacation day not earned by that person.

(c1), (c2) Repealed by Session Laws 2002-126, s. 7.11(a), effective July 1, 2002, and applicable only to leave days accruing after September 30, 2002.

(c3) Teachers may accumulate annual vacation leave days without any applicable maximum until June 30 of each year. In order that only 30 days of annual vacation leave carry forward to July 1, on June 30 of each year any teacher or other personnel paid on the teacher salary schedule who has accumulated more than 30 days of annual vacation leave shall convert to sick leave the remaining excess accumulation.

Upon separation from service due to service retirement, resignation, dismissal, reduction in force, or death, an employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 30 days. In addition to the maximum of 30 days pay for accumulated annual leave, upon separation from service due to service retirement, any teacher or other personnel paid on the teacher salary schedule with more than 30 days of accumulated annual vacation leave may convert some or all of the excess accumulation to sick leave for creditable service towards retirement. Employees going onto term disability may exhaust annual leave rather than be paid in a lump sum.

(d) Personal Leave. — Teachers earn personal leave at the rate of .20 days for each full month of employment not to exceed two days per year. Personal leave may be accumulated to a maximum of five days. Personal leave may be used only upon the authorization of the teacher's immediate supervisor, but if the request is made at least five days in advance, the teacher cannot be required to provide a reason for the request. Unless approved by the principal, a teacher shall not take personal leave on the first day the teacher is required to report for the school year, on required teacher workdays, or on the day before or the day after holidays or scheduled vacation days. Teachers may transfer personal leave days between local school administrative units. The local school administrative unit shall credit a teacher who has separated from service and is reemployed within 60 months from the date of separation with all personal leave accumulated at the time of separation. Local school administrative units shall not advance personal leave. Teachers using personal leave receive full salary less the required substitute deduction.

(e) Teachers in Year-Round Schools. — Compensation for teachers employed in year-round schools shall be the same as teachers paid for a 10-month term, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity for teachers who are employed at year-round schools shall be equivalent to those of other teachers employed for the same number of months, respectively. Teachers paid for a term of 10 months in year-round schools shall receive their salary in 12 equal installments.

(f) Overpayment. — Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.

(g) Service in Armed Forces. — The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(g1) Payment During Military Duty. — The State Board of Education shall adopt rules relating to leaves of absence, without loss of pay or time, for periods

of military training and for State or federal military duty or for special emergency management service. The rules shall apply to all public school employees, including, but not limited to, school teachers, administrators, guidance counselors, speech language pathologists, nurses, and custodians employed by local boards of education or by charter schools. The rules shall provide that (i) the State pays any salary differential to all public school employees in State-funded positions, (ii) the employing local board of education pays any pay differential to all public school employees in locally funded positions, (iii) the employing charter school pays any pay differential to all public school employees in the charter school, and (iv) the employing local board of education pays the local supplement.

(h) Teachers Paid From Other Funds. — Every local board of education may adopt, as to teachers not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system. If a local board of education does not adopt a local salary schedule, the State salary schedule shall apply. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

When a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason. A board of education may authorize the superintendent to supplement the salaries of all teachers from local funds, and the minutes of the board shall show what increase is allowed each teacher.

(i) Longevity Pay. — Longevity pay shall be based on the annual salary on the employee's anniversary date.

(j) Parental Leave. — A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. A teacher may also use up to 30 days of sick leave to care for a child placed with the teacher for adoption. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise. (1997-443, s. 8.38(e); 1999-237, s. 28.26(a), (b); 2002-126, s. 7.11(a); 2002-159, s. 37.5(a); 2003-301, s. 1; 2004-124, s. 7.20; 2004-180, s. 2.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-180, s. 3, provides: "For certified and noncertified employees employed on or after the effective date of this act, the annual rate of pay beginning with the 2005-2006 school year shall not be reduced as the result of this act. Furthermore, nothing in this act shall be construed to change the pay cycle for noncertified employees. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee on local compliance with this section."

Session Laws 2004-180, s. 5, provides: "Nothing in this act shall require the General Assembly to appropriate funds to implement it or require a local school administrative unit to spend additional funds to implement it."

Effect of Amendments. —

Session Laws 2004-124, s. 7.20, effective July 1, 2004, added the last sentence in the first paragraph of subsection (b).

Session Laws 2004-180, s. 2, effective August 9, 2004, and applicable in all 100 counties and in all local administrative units to school years beginning with the 2005-2006 school year, in the first paragraph following subsection (b), substituted "midway between one twenty-first and one twenty-second" for "one twenty-second," and added the fourth and last sentences; and added the last paragraph following subsection (b).

ARTICLE 21.

Other Employees.

§ 115C-316. Salary and vacation.

Editor's Note. —

Session Laws 2002-126, s. 28.10(a), as amended by Session Laws 2004-124, s. 31.18A(a), amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subsection (d), as added by the 1998 act, from June 30, 2003, to June 30, 2005.

Session Laws 2004-124, s. 31.18A.(e)-(g), as amended by Session Laws 2004-161, s. 53.2, provides: "(e) The Retirement Systems Division shall conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies. The Retirement Systems Division shall develop findings and recommendations for the adoption of an efficient and fiscally sound policy on postretirement reemployment and shall report those findings and recommendations, as well as the analysis that produced them, to the General Assembly by February 1, 2005.

"(f) In order to facilitate the success of its request for a private letter ruling from the Internal Revenue Service, as mandated by Section 28.13(d) of S.L. 2002-126, the Retirement Systems Division may modify the scope of its inquiry to the extent that a substantive ruling maybe obtained and used by the General Assembly to adopt an efficient and fiscally sound policy on postretirement reemployment.

"(g) Notwithstanding any other provision of law, effective July 1, 2004, each local school administrative unit or charter school participating in the Teachers' and State Employees' Retirement System shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit or charter school shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, effective July 1, 2004, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

ARTICLE 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) Repealed by Session Laws 1997-221, s. 13(a).

(1a) "Career employee" as used in this section means:

a. An employee who has obtained career status with that local board as a teacher as provided in G.S. 115C-325(c);

b. An employee who has obtained career status with that local board in an administrative position as provided in G.S. 115C-325(d)(2);

c. A probationary teacher during the term of the contract as provided in G.S. 115C-325(m); and

d. A school administrator during the term of a school administrator contract as provided in G.S. 115C-287.1(c).

(1b) "Career school administrator" means a school administrator who has obtained career status in an administrative position as provided in G.S. 115C-325(d)(2).

(1c) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(1d) "Case manager" means a person selected under G.S. 115C-325(h)(7).

(2) Repealed by Session Laws 1997, c. 221, s. 13(a).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(4a) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325(f)(2).

(4b) "Exchange teacher" means a nonimmigrant alien teacher participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q).

(5) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(5a) **(Effective until June 30, 2005)** "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any capacity, other than as a substitute teacher or a part-time tutor, with a local board of education or a charter school for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of education or a charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers.

(5b) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(6) "Teacher" means a person who holds at least a current, not provisional or expired, Class A certificate or a regular, not provisional or expired,

vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel; and who is employed to fill a full-time, permanent position.

(7) **(See note)** Redesignated as (a)(5a).

(8) "Year" for purposes of computing time as a probationary teacher shall be not less than 120 workdays performed as a probationary teacher in a full-time permanent position in a school year. Workdays performed pending the outcome of a criminal history check as provided in G.S. 115C-332 are included in computing time as a probationary teacher.

(b) Personnel Files. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325(e)(1)g. or G.S. 115C-325(e)(1)o. as grounds for dismissal or demotion.

(c)(1) Election of a Teacher to Career Status. — Except as otherwise provided in subdivision (3) of this subsection, when a teacher has been employed by a North Carolina public school system for four consecutive years, the board, near the end of the fourth year, shall vote upon whether to grant the teacher career status. The board shall give the teacher written notice of that decision by June 15. If a majority of the board votes to grant career status to the teacher, and if it has notified the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate the teacher's employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status:

a. It shall not reemploy the teacher for a fifth consecutive year;

b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and

c. The teacher shall be entitled to an additional month's pay for every 30 days after June 16 that the board fails to vote upon the issue of granting career status.

(2) Employment of a Career Teacher. — A teacher who has obtained career status in any North Carolina public school system need not

serve another probationary period of more than one year. The board may grant career status immediately upon employing the teacher, or after the first year of employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current term. If after one year of employment, the board fails to vote on the issue of granting career status:

a. It shall not reemploy the teacher for a second consecutive year;

b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and

c. The teacher shall be entitled to one additional month's pay for every 30 days beyond June 16 that the board fails to vote upon the issue of granting career status.

(2a) Notice of Teachers Eligible to Achieve Career Status. — At least 30 days prior to any board action granting career status, the superintendent shall submit to the board a list of the names of all teachers who are eligible to achieve career status. Notwithstanding any other provision of law, the list shall be a public record under Chapter 132 of the General Statutes.

(3) Ineligible for Career Status. — No employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status as a teacher if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is employed as a school administrator who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education.

(4) Leave of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.

(5) Consecutive Years of Service. — If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher is on sick leave, disability leave, or both, that school year shall not be deemed to constitute (i) a consecutive year of service for the teacher or (ii) a break in the continuity in consecutive years of service for the teacher.

(6) Status of Exchange Teachers. — Exchange teachers shall not be eligible to obtain career status. However, for purposes of determining eligibility to receive employment benefits under this Chapter, including personal leave, annual vacation leave, and sick leave, an exchange teacher shall be considered a permanent teacher if employed with the expectation of at least six full consecutive monthly pay periods of employment and if employed at least 20 hours per week.

(d) Career Teachers and Career School Administrators.

(1) A career teacher or career school administrator shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

(2)a. The provisions of this subdivision do not apply to a person who is ineligible for career status as provided by G.S. 115C-325(c)(3).

b. Repealed by Session Laws 1997, c. 221, s. 13(a).

c. Subject to G.S. 115C-287.1, when a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his

employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as a full-time, permanent principal or supervisor in a contract year.

A principal or supervisor who has obtained career status in that position in any North Carolina public school system may be required by the board of education in another school system to serve an additional three-year probationary period in that position before being eligible for career status. However, he may, at the option of the board of education, be granted career status immediately or after serving a probationary period of one or two additional years. A principal or supervisor with career status who resigns and within five years is reemployed by the same school system need not serve another probationary period in that position of more than two years and may, at the option of the board, be reemployed immediately as a career principal or supervisor or be given career status after only one year. In any event, if he is reemployed for a third consecutive year, he shall automatically become a career principal or supervisor.

(e) Grounds for Dismissal or Demotion of a Career Employee.

(1) Grounds. — No career employee shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

a. Inadequate performance.
b. Immorality.
c. Insubordination.
d. Neglect of duty.
e. Physical or mental incapacity.
f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
g. Conviction of a felony or a crime involving moral turpitude.
h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
i. Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.
j. Failure to comply with such reasonable requirements as the board may prescribe.
k. Any cause which constitutes grounds for the revocation of the career teacher's teaching certificate or the career school administrator's administrator certificate.

l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).

m. Failure to maintain his certificate in a current status.

n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.

o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Reduction in Force. — Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The notice shall include a statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career employee may file with the superintendent a written request for a hearing before the board within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit a hearing by a case manager shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available career employees to be maintained by the board. Career employees whose names are placed on such a list shall have a priority on all positions in which they acquired career status and for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed career employee a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(3) Inadequate Performance. — In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.

(4) Three-Year Limitation on Basis of Dismissal or Demotion. — Dismissal or demotion under subdivision (1) above, except paragraphs g. and o. thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal or demotion is mailed to the career employee. The three-year limitation shall not apply to dismiss-

als or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a career employee's sexual misconduct toward or sexual harassment of students or staff.

(f)(1) Suspension without Pay. — If a superintendent believes that cause exists for dismissing a career employee for any reason specified in G.S. 115C-325(e)(1) and that immediate suspension of the career employee is necessary, the superintendent may suspend the career employee without pay. Before suspending a career employee without pay, the superintendent shall meet with the career employee and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the career employee shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the career employee's personnel file.

(2) Disciplinary Suspension Without Pay. — A career employee recommended for suspension without pay pursuant to G.S. 115C-325(a)(4a) may request a hearing before the board. If no request is made within 15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

a. Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. — The procedures for a board hearing under G.S. 115C-325(j3) shall apply if any of the following circumstances exist:

1. The recommended disciplinary suspension without pay is for more than 10 days; or
2. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's certificate, or providing false information.

b. Board hearing for disciplinary suspensions of no more that 10 days. — The procedures for a board hearing under G.S. 115C-325(j2) shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325(f)(2)a.2.

(f1) Suspension with Pay. — If a superintendent believes that cause may exist for dismissing or demoting a career employee for any reasons specified in G.S. 115C-325(e)(1), but that additional investigation of the facts is necessary and circumstances are such that the career employee should be removed immediately from his duties, the superintendent may suspend the career employee with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of his action and shall notify the career employee within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the career employee within the 90-day period, the career employee shall be reinstated to his duties immediately and all records of the

suspension with pay shall be removed from the career employee's personnel file at his request. However, if the superintendent and the employee agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the career employee at any time during the period of the extension.

(f2) Procedure for Demotion of Career School Administrator. — If a superintendent intends to recommend the demotion of a career school administrator, the superintendent shall give written notice to the career school administrator by certified mail or personal delivery and shall include in the notice the grounds upon which the superintendent believes the demotion is justified. The notice shall include a statement that if the career school administrator requests a hearing within 15 days after receipt of the notice, the administrator shall be entitled to have the grounds for the proposed demotion reviewed by the local board of education. If the career school administrator does not request a board hearing within 15 days, the superintendent may file the recommendation of demotion with the board. If, after considering the superintendent's recommendation and the evidence presented at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board may by resolution order the demotion. The procedures for a board hearing under G.S. 115C-325(j3) shall apply to all demotions of career school administrators.

(g) Repealed by Session Laws 1997, c. 221, s. 13(a).

(h) Procedure for Dismissal or Demotion of Career Employee.

(1)a. A career employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

b. G.S. 115C-325(f2) shall apply to the demotion of a career school administrator.

(2) Before recommending to a board the dismissal or demotion of the career employee, the superintendent shall give written notice to the career employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The superintendent also shall meet with the career employee and give him written notice of the charges against him, an explanation of the basis for the charges, and an opportunity to respond if the career employee has not done so under G.S. 115C-325(f)(1). The notice shall include a statement to the effect that if the career employee within 14 days after the date of receipt of the notice requests a review, he shall be entitled to have the grounds for the proposed recommendations of the superintendent reviewed by a case manager. A copy of G.S. 115C-325 and a current list of case managers shall also be sent to the career employee. If the career employee does not request a hearing with a case manager within the 14 days provided, the superintendent may submit his recommendation to the board.

(3) Within the 14-day period after receipt of the notice, the career employee may file with the superintendent a written request for either (i) a hearing on the grounds for the superintendent's proposed recommendation by a case manager or (ii) a hearing within 10 days before the board on the superintendent's recommendation. If the career employee requests an immediate hearing before the board, he forfeits his right to a hearing by a case manager. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation or (ii) accept or modify the super-

intendent's recommendation and dismiss, demote, reinstate, or suspend the employee without pay. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of the case manager is filed with the superintendent.

(4) Repealed by Session Laws 1997, c. 221, s. 13(a).

(5) If the career employee elects to request a hearing by a case manager, the career employee and superintendent shall each have the right to eliminate up to one-third of the names on the approved list of case managers. The career employee shall specify those case managers who are not acceptable in the career employee's request for a review of the superintendent's proposed recommendation under G.S. 115C-325(h)(3). The superintendent and career employee may jointly select a person to serve as case manager. The person need not be on the master list of case managers maintained by the Superintendent of Public Instruction.

(6) If a career employee requests a review by a case manager, the superintendent shall notify the Superintendent of Public Instruction within two days' receipt of the request. The notice shall contain a list of the case managers the career employee and the superintendent have eliminated from the master list or the name of a person, if any, jointly selected. Failure to exercise the right to eliminate names from the master list shall constitute a waiver of that right.

(7) The Superintendent of Public Instruction shall select a case manager within three days of receiving notice from the superintendent. The Superintendent of Public Instruction shall designate the person jointly selected by the parties to serve as case manager provided the person agrees to serve as case manager and can meet the requirements for time frames for the hearing and report as provided in G.S. 115C-325(i1)(1). If a case manager was not jointly selected or if the case manager is not available, the Superintendent of Public Instruction shall select a case manager from the master list. No person eliminated by the career employee or superintendent shall be designated case manager.

(8) The superintendent and career employee shall provide each other with copies of all documents submitted to the Superintendent of Public Instruction or to the designated case manager.

(h1) Case Managers; Qualifications; Training; Compensation.

(1) Each year the State Board of Education shall select and maintain a master list of no more than 42 qualified case managers.

(2) Persons selected by the State Board as case managers shall be: (i) certified as a North Carolina Superior Court mediator; (ii) a member of the American Arbitration Association's roster of arbitrators and mediators; or (iii) have comparable certification in alternative dispute resolution. Case managers must complete a special training course approved by the State Board of Education.

(3) The State Board of Education shall determine the compensation for a case manager. The State Board shall pay the case manager's compensation and reimbursement for expenses.

(i) Repealed by Session Laws 1997, c. 221, s. 13(a).

(i1) Report of Case Manager; Superintendent's Recommendation.

(1) The case manager shall complete the hearing held in accordance with G.S. 115C-325(j) and prepare the report within 10 days from the time of the designation. The case manager may extend the period of time by up to five additional days if the case manager informs the superintendent and the career employee that justice requires that a greater

time be spent in connection with the investigation and the preparation of the report. Furthermore, the superintendent and the career employee may agree to an extension of more than five days.

(2) The case manager shall make all necessary findings of fact, based upon the preponderance of the evidence, on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified. The case manager also shall make a recommendation as to whether the findings of fact substantiate the superintendent's grounds for dismissal. The case manager shall deliver copies of the report to the superintendent and the career employee.

(3) Within two days after receiving the case manager's report, the superintendent shall decide whether to submit a written recommendation to the local board for dismissal, demotion, or disciplinary suspension without pay to the board or to drop the charges against the career employee. The superintendent shall notify the career employee, in writing, of the decision.

(4) If the superintendent contends that the case manager's report fails to address a critical factual issue, the superintendent shall within three days receipt of the case manager's report, request in writing with a copy to the career employee that the case manager prepare a supplement to the report. The superintendent shall specify what critical factual issue the superintendent contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(j) Hearing by a Case Manager. — The following provisions shall apply to a hearing conducted by the case manager.

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules and regulations adopted by the State Board of Education to govern case manager hearings.

(3) At the hearing the career employee and the superintendent or the superintendent's designee shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.

(4) Rules of evidence shall not apply to a hearing conducted by a case manager and the case manager may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least five days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the superintendent intends to present. At least three days before the hearing, the career employee shall provide to the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the career employee intends to present. Additional witnesses or documentary evidence may not be presented except upon a finding by the case manager that the new evidence is critical to the matter at

issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subdivision.

(6) The case manager may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal.

(7) The case manager shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(8) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates a hearing before the board or to appeal the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings before the case manager.

(j1) Board Determination.

(1) Within two days after receiving the superintendent's notice of intent to recommend the career employee's dismissal to the board, the career employee shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the career employee can show that the request for a hearing was postmarked within the time provided, the career employee shall not forfeit the right to a board hearing. Within two days after receiving the career employee's request for a board hearing, the superintendent shall request that a transcript of the case manager hearing be made. Within two days of receiving a copy of the transcript, the superintendent shall submit to the board the written recommendation and shall provide a copy of the recommendation to the career employee. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the case manager's report and a copy of the transcript of the case manager hearing.

(2) If the career employee contends that the case manager's report fails to address a critical factual issue the career employee shall, at the same time he notifies the superintendent of a request for a board hearing pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the superintendent that the case manager prepare a supplement to the case manager's report. The career employee shall specify the critical factual issue he contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and shall deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(3) Within two days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the career employee by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than seven nor more than 10 days after the board has notified the career employee, unless both parties agree to an extension. If the career employee did not request a hearing, the board may, by resolution, reject the superintendent's decision, or accept or modify the decision and dismiss, demote, reinstate, or suspend the career employee without pay.

(4) If the career employee requests a board hearing, it shall be conducted in accordance with G.S. 115C-325(j2).

(5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommenda-

tion and dismiss, demote, reinstate, or suspend the employee without pay.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

(j2) Board Hearing. — The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) If the career employee requested a hearing by a case manager, the board shall receive the following:

a. The whole record from the hearing held by the case manager, including a transcript of the hearing, as well as any other records, exhibits, and documentary evidence submitted to the case manager at the hearing.

b. The case manager's findings of fact, including any supplemental findings prepared by the case manager under G.S. 115C-325 (i1)(4) or G.S. 115C-325(j1)(2).

c. The case manager's recommendation as to whether the grounds in G.S. 115C-325(e) submitted by the superintendent are substantiated.

d. The superintendent's recommendation and the grounds for the recommendation.

(3) If the career employee did not request a hearing by a case manager, the board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the career employee seven days before the hearing.

b. Any documentary evidence the career employee intends to use to rebut the superintendent's recommendation. The career employee shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(4) The superintendent and career employee may submit a written statement not less than three days before the hearing.

(5) The superintendent and career employee shall be permitted to make oral arguments to the board based on the record before the board.

(6) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the hearing before the case manager.

(7) The board shall accept the case manager's findings of fact unless a majority of the board determines that the findings of fact are not supported by substantial evidence when reviewing the record as a whole. In such an event, the board shall make alternative findings of fact. If a majority of the board determines that the case manager did not address a critical factual issue, the board may remand the findings of fact to the case manager to complete the report to the board. If the case manager does not submit the report within seven days receipt of the board's request, the board may determine its own findings of fact regarding the critical factual issues not addressed by the case manager. The board's determination shall be based upon a preponderance of the evidence.

(8) The board is not required to provide a transcript of the hearing to the career employee. If the board elects to make a transcript and if the

career employee contemplates an appeal to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings. A career employee may have the hearing transcribed by a court reporter at the career employee's expense.

(j3) Board Hearing for Certain Disciplinary Suspensions, Demotions of Career School Administrators, and for Reductions in Force. — The following procedures shall apply for a board hearing under G.S. 115C-325(e)(2), G.S. 115C-325(f2), and G.S. 115C-325(f)(2)a:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the career employee and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay under G.S. 115C-325(f)(2)a., a demotion of a career school administrator under G.S. 115C-325(f2), or whether the grounds for a dismissal or demotion due to a reduction in force is justified.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least eight days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.

(6) At least six days before the hearing, the career employee shall provide the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the career employee intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subsection.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates an appeal of the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings.

(k), (*l*) Repealed by Session Laws 1997, c. 221, s. 13(a).

(m) Probationary Teacher.

(1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career employee may be dismissed as set forth in subsections (e), (f), (f1), and (h) to (j3) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. — Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, or any probationary teacher whose contract is not renewed under G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be determined under G.S. 115C-325(j2)(8) or G.S. 115C-325(j3)(10). A career employee who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation; Nonrenewal of Contract. — A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 15.

(p) Section Applicable to Certain Institutions. — Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students.

(p1) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Residential Schools. —

(1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of teachers, principals, assistant principals, directors, supervisors, and other certificated personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The Secretary may dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when:

a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and

b. That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other certificated personnel for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a teacher, principal, assistant principal, director, supervisor, or other certifi-

cated personnel may request a hearing before a panel of three members designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of certificated staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

Within 30 days of any dismissal under this subdivision, a certificated staff member may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to certificated staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The Secretary of Health and Human Services or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection.

(q) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Schools.

(1) Notwithstanding any other provision of this section or any other law, this subdivision governs the State Board's dismissal of principals assigned to low-performing schools to which the Board has assigned an assistance team:

a. The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written findings and recommendations regarding the principal's inadequate performance.

b. If the State Board through its designee recommends the dismissal of a principal under this subdivision, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

c. The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.

d. The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

e. If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.

f. In all hearings under this subdivision, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under sub-subdivision d. of this subdivision, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a career employee under G.S. 115C-325(e)(1).

g. In all hearings under this subdivision, two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.

h. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

b. That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career teacher.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to

persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of certified staff members who have engaged in a remediation plan under G.S. 115C-105.38A(a) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

A certified staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to certified staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The State Board of Education or a local board may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent a local board from refusing to renew the contract of any person employed in a school identified as low-performing under G.S. 115C-105.37.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109; 1991 (Reg. Sess., 1992), c. 942, s. 1; c. 1038, s. 14; 1993, c. 169, s. 1; c. 210, ss. 1-3; 1993 (Reg. Sess., 1994), c. 677, ss. 10, 16(a); 1995, c. 369, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 8; 1997-221, ss. 11(a), 13(a); 1997-443, s. 11A.118(a); 1998-5, s. 2; 1998-59, s. 3; 1998-131, s. 6; 1998-202, s. 4(o); 1998-212, s. 28.24(c); 1998-217, s. 67.1(a); 1999-96, ss. 1-5; 1999-456, s. 34; 2000-67, s. 8.24(b); 2000-137, s. 4(r); 2000-140, ss. 23, 24; 2001-376, s. 2; 2001-424, ss. 28.11(g), 32.25(b); 2001-487, s. 74(c); 2002-110, ss. 2, 3; 2002-126, ss. 7.38, 28.10(a), (c), (d); 2003-302, s. 1; 2004-81, s. 2; 2004-124, s. 31.18A(a), (c), (d); 2004-199, s. 57(b).)

Editor's Note. —

Session Laws 2002-126, s. 28.10(a), as amended by Session Laws 2004-124, s. 31-18A(a), amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subdivision (a)(5a), as added by the 1998 act, from June 30, 2003, to June 30, 2005.

Session Laws 2002-126, s. 28.10(c), as amended by Session Laws 2004-124, s. 31.18A(c), amended Session Laws 1998-217, s. 67.1 to change the expiration date affecting subdivision (a)(5a), as amended by the 1998 act, from June 30, 2003, to June 30, 2005.

Session Laws 2002-126, s. 28.10(d), as amended by Session Laws 2004-124, s. 31.18A(d), amended Session Laws 2001-424, s. 32.25(c), to change the expiration date affecting subdivision (a)(5a), as amended by the 2001 act, from June 30, 2003, to June 30, 2005.

Session Laws 2003-284, s. 7.20(a), provided for certain appropriated funds to be used to provide annual bonuses to teachers certified in and teaching in the fields of mathematics, science, or special education in grades 6 through 12 at middle and high schools with eighty percent (80%) or more of the students eligible for free or reduced lunch or with fifty percent (50%) or more of students performing below

grade level in Algebra I and Biology. Session Laws 2003-284, s. 7.20(a) was repealed by Session Laws 2004-124, s. 7.14.

Session Laws 2004-124, ss. 31.18A.(e)-(g), as amended by Session Laws 2004-161, s. 53.2, provides: "(e) The Retirement Systems Division shall conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies. The Retirement Systems Division shall develop findings and recommendations for the adoption of an efficient and fiscally sound policy on postretirement reemployment and shall report those findings and recommendations, as well as the analysis that produced them, to the General Assembly by February 1, 2005.

"(f) In order to facilitate the success of its request for a private letter ruling from the Internal Revenue Service, as mandated by Section 28.13(d) of S.L. 2002-126, the Retirement Systems Division may modify the scope of its inquiry to the extent that a substantive ruling maybe obtained and used by the General Assembly to adopt an efficient and fiscally sound policy on postretirement reemployment.

"(g) Notwithstanding any other provision of law, effective July 1, 2004, each local school administrative unit or charter school participating in the Teachers' and State Employees' Retirement System shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit or charter school shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, effective July 1, 2004, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 1998-212, s. 28.24(c), as amended by Session Laws 2002-126, s. 28.10(a), and as amended by Session Laws 2004-124, s. 31.18A(a), effective January 1, 1999, and expiring June 30, 2005, added present subdivision (a)(5a), and redesignated former subdivision (a)(5a) as present subdivision (a)(5b).

Session Laws 1998-217, s. 67.1, as amended by Session Laws 2002-126, s. 28.10(c), and as amended by Session Laws 2004-124, s. 31.18A(c), effective January 1, 1999, and expiring June 30, 2005, substituted "G.S. 135-3(8)c" for "G.S. 135-3(8)c1" in subdivision (a)(5a).

Session Laws 2001-424, s. 32.25(b), as amended by Session Laws 2004-124, s. 31.18A(d), amended Session Laws 2002-126, s. 28.10(d), effective July 1, 2001, and expiring June 30, 2005, substituted "six months" for "12 months" in two places in subdivision (a)(5a).

Session Laws 2004-81, s. 2, effective July 8, 2004, added "or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q)" to the end of subdivision (a)(4b).

Session Laws 2004-199, s. 57(b), effective August 17, 2004, in subdivision (5a), inserted "or a charter school" three times following "local board of education" and "a school other than a charter school" following "retired teacher"; and made a minor punctuation change.

CASE NOTES

VII. Judicial Review.

VII. JUDICIAL REVIEW.

Judicial Review Not Available Where Hearing on Dismissal Was Not Requested. — Under G.S. 115C-325(n), judicial review was not available to a career status teacher who was dismissed without having requested a hearing before the board of education, as failure to request a school board hearing precluded judicial review Hummer v. Pulley, 157 N.C. App. 60, 577 S.E.2d 918, 2003 N.C. App. LEXIS 375 (2003), cert. denied, 357 N.C. 459, 585 S.E.2d 758 (2003).

SUBCHAPTER VI. STUDENTS.

ARTICLE 29.

Protective Provisions and Maintenance of Student Records.

§ 115C-402. Student records; maintenance; contents; confidentiality.

CASE NOTES

Confidentiality and Right of Confrontation. — Defendant's confrontation rights under N.C. Const. art. I, § 23 were not violated when the trial court refused to allow defendant to cross-examine the witness about the witness's disciplinary record, as there were confidentiality concerns about the record pursuant to G.S. 115C-402, and defendant failed to show how the disciplinary record was relevant to impeach the witness's credibility under G.S. 8C-1, N.C. R. Evid. 608(b). State v. Oliver, 159 N.C. App. 451, 584 S.E.2d 86, 2003 N.C. App. LEXIS 1494 (2003).

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 2. Budget.

§ 115C-430. Apportionment of county appropriations among local school administrative units.

CASE NOTES

Construction with Other Provisions. — Fact that the North Carolina State Board of Education had certified that students who attended school in a school district lived in two counties was not a formal recognition that the school district was located in both counties and did not prevent the Board from approving a plan to merge three school systems located in one county, pursuant to G.S. 115C-68.1, without obtaining approval from county commissioners who governed an adjacent county. Kings Mt. Bd. of Educ. v. N.C. State Bd. of Educ., 159 N.C. App. 568, 583 S.E.2d 629, 2003 N.C. App. LEXIS 1509 (2003).

ARTICLE 31A.

Civil Penalty and Forfeiture Fund.

§ 115C-457.1. Creation of Fund; administration.

CASE NOTES

Statute Properly Articulates the Necessary Details to Effect the Constitutional Purpose of Maintaining Free Public Schools. — Section 115C-457.1, which created the civil penalty fund, is consistent with the intent and purpose of N.C. Const. art. IX, § 7, that civil penalties be used exclusively to support the State's public schools; because art. IX,

§ 7 fails to unambiguously specify how that is to be accomplished, it requires legislation to give it effect, and G.S. 115C-457.1 properly articulates the necessary details to effect the constitutional purpose. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Article 32B.

Computer Loan Revolving Fund.

§ 115C-472.5. Creation of the Fund; administration.

(a) The Department of Public Instruction shall administer the Computer Loan Revolving Fund. The Fund shall be used to provide loans to local school administrative units to enable them to purchase computer equipment to implement the Uniform Education Reporting System in accordance with the standards adopted by the State Board of Education pursuant to G.S. 115C-12(18).

(b) A loan shall be for the actual amount of the equipment up to a maximum to be determined by the Superintendent.

(c) Loans shall be evidenced by notes made payable to the Department of Public Instruction. The rate, term, and other conditions of the note shall be determined in accordance with uniform policies established by the Superintendent.

(d) The Department of Public Instruction shall report to the State Chief Information Officer on an annual basis on all loans made from the fund. (1991 (Reg. Sess., 1992), c. 1044, s. 23(a); 1997-18, s. 15(m); 2004-129, s. 33.)

Effect of Amendments. — Session Laws 2004-129, s. 33, effective July 1, 2004, substituted "State Chief Information Officer" for "Information Resource Management Commission" in subsection (d).

SUBCHAPTER IX. PROPERTY.

Article 37.

School Sites and Property.

§ 115C-517. Acquisition of sites.

Local School Construction Financing Study Commission. — Session Laws 2004-124, ss. 7.32(a)-(j), and Session Laws 2004-161, ss. 11.1 through 11.10, provide for the establishment of a Local School Construction Financing Study Commission to examine the present system of local financing for school facilities and study alternative options for financing local school construction, renovation, repair, and maintenance. The Commission shall make an interim report to the 2005 General Assembly no later than January 31, 2005, and a final report to the 2006 Regular Session of the 2005 General Assembly no later than March 31, 2006. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. The interim report may also contain recommendations for legislation. The Commission shall terminate on March 31, 2006.

Editor's Notes. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring

during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 115C-518. Disposition of school property; easements and rights-of-way.

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 3; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 3; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 3; Cabarrus: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Carteret: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Dare County Board of Education: 2004-16 (as to lease of property to construct and provide up to three affordable rental housing projects with priority for teachers); Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 3; Cleveland: 1995, c. 201, s. 1; Duplin: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Durham Public Schools: 1997-64; Forsyth: 1993 (Reg. Sess., 1994, c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 2; Hyde: 1981, c. 877; Iredell: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 624, s. 3; Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 3; Richmond: 1991 (Reg. Sess., 1992), c. 898; Rowan: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 4; Stanly: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Asheville-Buncombe Technical Community College: 2000-99, s. 1; Bladen County Board of Education: 1991 (Reg. Sess., 1992), c. 853; 2003-122, ss. 1, 2 (as to subsection (a)); city of Burlington Board of Education: 1993, c. 277, s. 3; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Dare County Board of Education: 2004-16 (as to lease of property to construct and provide up to three affordable rental housing projects with priority for teachers); Davie County Board of Education: 1985, c. 18; county of Duplin, town of Kenansville, and Duplin County Board of Education: 1987, c. 50; Graham County Board of Education: 1995, c. 154, s. 2; Hertford County Board of Education: 1985, c. 123, s. 2; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, Second Ex. Sess., c. 16, s. 1; Transylvania County Board of Education: 1983, c. 579; Albemarle City School Administrative Unit: 1985, c. 74.

§ 115C-522. Provision of equipment for buildings.

(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment, and materials, and these purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year. The State Board of Education shall adopt rules regarding equipment standards for supplies, equipment, and materials related to student transportation. The State Board may adopt guidelines for any commodity that needs safety features. If a commodity that needs safety features is available on statewide term contract, any guidelines adopted by the State Board must at a minimum meet the safety standards of the statewide term contract. Compliance with Article 8 of Chapter 143 of the General Statutes is not mandatory for the purchase of published books, manuscripts, maps, pamphlets, and periodicals.

(1) Where competition is available, local school administrative units may utilize the:

a. E-Quote service of the NC E-Procurement system as one means of solicitation in seeking informal bids for purchases subject to the bidding requirements of G.S. 143-131; and

b. Division of Purchase and Contract's electronic Interactive Purchasing System as one means of advertising formal bids on purchases subject to the bidding requirements of G.S. 143-129 and applicable rules regarding advertising. This sub-subdivision does not prohibit a local school administrative unit from using other methods of advertising.

(2) In order to provide an efficient transition of purchasing procedures, the Secretary of the Department of Administration and the local school administrative units shall establish a local school administrative unit purchasing user group. The user group shall be comprised of a proportionate number of representatives from the Department of Administration and local school administrative unit purchasing and finance officers. The user group shall examine any issues that may arise between the Department of Administration and local school administrative units, including the new relationship between the Department and the local school administrative units, the appropriate exchange of information, the continued efficient use of E-Procurement, appropriate bid procedures, and any other technical assistance that may be necessary for the purchase of supplies and materials.

(b) It shall be the duty of the local boards of education to provide suitable school furniture and apparatus, as provided in G.S. 115C-521(b).

(c) It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of Environment and Natural Resources, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Health Services. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1352, art. 5, s. 35; art. 15, s. 8; 1965, c. 840; 1973, c. 476, s. 128; 1981, c. 423, s. 1; 1985, c. 436, s. 2; 1989, c. 727, s. 219(33); 1995 (Reg. Sess., 1996), c. 716, s. 13; 1997-443, s. 11A.51; 1998-194, s. 2; 2003-147, s. 1; 2004-199, s. 29(a); 2004-203, s. 72(b).)

Editor's Note. —

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act [Session Laws 2003-147] become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of the act [Session Laws 2003-147], or April 1, 2004, whichever occurs first."

Effect of Amendments. — Session Laws 2003-147, s. 1, as amended by Session Laws 2004-203, s. 72(b), rewrote subsection (a). See editor's note for effective date.

Session Laws 2004-199, s. 29(a), effective April 1, 2004, added the last sentence in the introductory language of subsection (a).

CASE NOTES

Market participant exemption applied to bar school bus operator's commerce clause claims where county school board was acting as a market participant, not a regulator,

in requiring all school bus operators to complete new safety procedures and forms; the county school board had the ultimate contractual relationship with the school bus operators as interpreted under state law, including, G.S. 115C-522(a), and did not act as a third party regulator of the contractual relationship. N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

Cited in N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ., 315 F. Supp. 2d 784, 2004 U.S. Dist. LEXIS 7288 (M.D.N.C. 2004).

§ 115C-522.1: Repealed by Session Laws 2003-147, s. 2, effective for a local school administrative unit when the unit is certified as being E-Procurement compliant, or April 1, 2004, whichever is first.

Certification as E-Procurement Compliant. — Session Laws 2003-147, s. 12, which provides for repeal of this section by s. 2 of the act [Session Laws 2003-147], as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act [Session Laws 2003-147] become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of the act [Session Laws 2003-147], or April 1, 2004, whichever occurs first."

§ 115C-529. Useful life guidelines.

The State Office of Information Technology Services shall develop and annually revise guidelines for determining the useful life of computers purchased under G.S. 115C-528. The Division of Purchase and Contract shall develop and periodically revise guidelines for determining the useful life of automobiles, school buses, and photocopiers purchased under G.S. 115C-528. The Local Government Commission shall develop and periodically revise guidelines for determining the useful life of mobile classroom units purchased under G.S. 115C-528. Guidelines for computers and photocopiers shall include provisions for upgrades during the term of the contract. The State Office of Information Technology Services, the Division of Purchase and Contract, and the Local Government Commission shall provide their respective guidelines to the State Board of Education by November 1, 1996. The State Board of Education shall provide the guidelines to local boards of education by January 1, 1997. (1995 (Reg. Sess., 1996), c. 716, s. 15; 2004-129, s. 34.)

Effect of Amendments. — Session Laws 2004-129, s. 34, effective July 1, 2004, twice substituted "State Office of Information Technology Services" for "Information Resource Management Commission."

Article 38A.

Public School Building Capital Fund.

§ 115C-546.1. Creation of Fund; administration.

Local School Construction Financing Study Commission. — Session Laws 2004-124, ss. 7.32(a)-(j), and Session Laws 2004-161, ss. 11.1 through 11.10, provide for the establishment of a Local School Construction Financing Study Commission to examine the present system of local financing for school facilities and study alternative options for financing local school construction, renovation, repair, and maintenance. The Commission shall make an interim report to the 2005 General Assembly no later than January 31, 2005, and a final report to the 2006 Regular Session of the 2005 General Assembly no later than March 31, 2006. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. The interim report may also contain recommendations for legislation. The Commission shall terminate on March 31, 2006.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Op-

erations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

ARTICLE 39.

Nonpublic Schools.

Part 1. Private Church Schools and Schools of Religious Charter.

§ 115C-548. Attendance; health and safety regulations.

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

The Division of Nonpublic Education, Department of Administration, shall ensure that materials are provided to these schools so that they can provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information may be provided electronically or on the Division's Web page. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children. (1979, c. 505; 1981, c. 423, s. 1; 2004-118, s. 4.)

Editor's Note. — Session Laws 2004-118, s. 1, provides: "This act shall be known as 'Garrett's Law'."

Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Effect of Amendments. — Session Laws 2004-118, s. 4, effective July 1, 2004, beginning with the 2004-2005 school year, in the first paragraph substituted "so long as the" for "Provided, however, that such"; and added the second paragraph.

§ 115C-549. Standardized testing requirements.

Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades three, six and nine. The nationally standardized test or other equiva-

lent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505; 1981, c. 423, s. 1; 1987, c. 738, s. 180(b); 2004-199, s. 30(a).)

Effect of Amendments. — Session Laws 2004-199, s. 30(a), effective August 17, 2004, substituted "G.S. 115C-174.13" for "the provision of G.S. 115C-196" in the last sentence.

§ 115C-550. High school competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each private church school or school of religious charter shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505; 1981, c. 423, s. 1; 2004-199, s. 30(b).)

Effect of Amendments. — Session Laws 2004-199, s. 30(b), effective August 17, 2004, substituted "G.S. 115C-174.13" for "the provision of G.S. 115C-196" in the last sentence.

Part 2. Qualified Nonpublic Schools.

§ 115C-556. Attendance; health and safety regulations.

Each qualified nonpublic school shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance so long as the school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

The Division of Nonpublic Education, Department of Administration, shall ensure that materials are provided to each qualified nonpublic school so that the school can provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information may be provided electronically or on the Division's Web page. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children. (1979, c. 506; 1981, c. 423, s. 1; 2004-118, s. 5.)

Editor's Note. — Session Laws 2004-118, s. 1, provides: "This act shall be known as 'Garrett's Law'."

Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Effect of Amendments. — Session Laws 2004-118, s. 5, effective July 1, 2004, beginning with the 2004-2005 school year, in the first paragraph substituted "so long as the" for "Provided, however, that such"; and added the second paragraph.

§ 115C-557. Standardized testing requirements.

Each qualified nonpublic school shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1; 1987, c. 738, s. 180(c); 2004-199, s. 30(c).)

Effect of Amendments. — Session Laws 2004-199, s. 30(c), effective August 17, 2004, substituted "G.S. 115C-174.13" for "the provision of G.S. 115C-196" in the last sentence.

§ 115C-558. High school competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each qualified nonpublic school shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each qualified nonpublic school shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to G.S. 115C-174.13, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1; 2004-199, s. 30(d).)

Effect of Amendments. — Session Laws 2004-199, s. 30(d), effective August 17, 2004, substituted "G.S. 115C-174.13" for "the provision of G.S. 115C-196" in the last sentence.

Part 3. Home Schools.

§ 115C-565. Requirements exclusive.

No school which complies with this Part shall be subject to any other provision of law relating to education except requirements of law respecting immunization. The Division of Nonpublic Education, Department of Adminis-

tration, shall provide to home schools information about meningococcal meningitis and influenza and their vaccines. This information may be provided electronically or on the Division's Web page. The information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children. (1987 (Reg. Sess., 1988), c. 891, s. 1; 2004-118, s. 6.)

Editor's Note. — Session Laws 2004-118, s. 1, provides: "This act shall be known as 'Garrett's Law'."

Session Laws 2004-118, s. 7, provides: "The Division of Public Health, Department of Health and Human Services, shall make available sample educational materials that can be provided to parents and guardians. The Division shall provide these materials to (i) local school administrative units for public schools other than charter schools, (ii) the Department of Public Instruction for charter schools, and (iii) the Division of Nonpublic Education, Department of Administration, for nonpublic schools including home schools. These materials may be provided electronically."

Effect of Amendments. — Session Laws 2004-118, s. 6, effective July 1, 2004, beginning with the 2004-2005 school year, added the last three sentences.

Chapter 115D.

Community Colleges.

Article 1.

General Provisions for State Administration.

Sec.

115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

Article 6.

Textile Training School.

115D-68. Creation of board of trustees; members and terms of office; no compensation.

Article 1.

General Provisions for State Administration.

§ 115D-2.1. State Board of Community Colleges.

Editor's Note. —

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(a3) The State Board of Community Colleges shall adopt the following rules to assist community colleges in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

(1) To establish the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate.

(2) To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).

b. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

(3) To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates.

The State Board shall develop a form for the appropriate individuals to provide their written, irrevocable consent for a community college to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of

students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(e) Repealed by Session Laws 1999-84, s. 3, effective May 21, 1999.

(f) **(See editor's note)** A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Advisory Budget Commission on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Community Colleges System Office as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4A, the courses shall be offered on a self-supporting basis.

(i) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on September 1 of each year on

expenditures for the New and Expanding Industry Program each fiscal year. The report shall include, for each company or individual that receives funds for New and Expanding Industry:

(1) The total amount of funds received by the company or individual;

(2) The amount of funds per trainee received by the company or individual;

(3) The amount of funds received per trainee by the community college training the trainee;

(4) The number of trainees trained by company and by community college; and

(5) The number of years the companies or individuals have been funded.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year.

(k) The North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines, which were adopted by the State Board of Community Colleges on April 18, 1997, apply to all funds appropriated for the Program after June 30, 1997. A project approved as an exception under these Guidelines, or these Guidelines as modified by the State Board of Community Colleges, shall be approved for one year only.

(*l*) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process.

(m) The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges.

(n) The North Carolina Community Colleges System Office shall provide the Department of Revenue with a list of all community colleges, including name, address, and other identifying information requested by the Department of Revenue. The North Carolina Community Colleges System Office shall update this list whenever there is a change.

(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a); 1997-443, ss. 9.5, 9.6(a), 11A.118(a); 1997-507, s. 4; 1998-111, s. 3; 1998-202, s. 4(q); 1999-84, ss. 3, 9; 1999-243, s. 9; 2000-137, s. 4(t); 2001-111, s. 1; 2001-427, s. 9(b); 2001-487, s. 47(e); 2004-124, s. 8.4.)

Editor's Note. —

Session Laws 2004-124, ss. 8.3(a)-(h), provide for the establishment of a community college faculty salary plan that (1) provides accountability to the General Assembly, (2) maintains local flexibility and autonomy for the community colleges, and (3) ensures that community college faculty members have a uniform minimum salary based on level of education, equivalent applicable experience, or both. Session Laws, 2004-124, s. 8.3(g), provides that the State Board of Community Colleges shall report on the implementation of this plan by December 1, 2004, and every year thereafter through December 1, 2009.

The first paragraph of Session Laws 2004-124, s. 8.9, effective July 1, 2004, was codified as subsection (o) of this section at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 8.4, effective July 1, 2004, substituted "September 1 of each year" for "March 1 and October 1 of each year" in subsection (i).

Article 2.

Local Administration.

§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated property.

Local Modification. — Chatham: 1995, c. 80, s. 2; Gaston: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Montgomery: 1995, c. 154, s. 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note) Nash: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Sampson: 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note), 1995, c. 399, ss. 1, 3 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Wilson: 1995 (Reg. Sess., 1996), c. 706 (repealed effective January 1, 2000 by Session Laws 1999, c. 115, s. 3; see Editor's Note); Asheville-Buncombe Technical Community College: 2000-99, ss. 1, 2; Board of Trustees of College of the Albemarle: 2002-57, s. 1 (expiring December 31, 2005); Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expiring December 31, 2005); Mayland Community College: 2003-320, s. 1, as amended by 2004-203, s. 81.

Article 6.

Textile Training School.

§ 115D-68. Creation of board of trustees; members and terms of office; no compensation.

The North Carolina Center for Applied Textile Technology shall be managed, subject to policies and regulations of the State Board of Community Colleges, by a board of trustees. The board of trustees shall consist of nine members appointed by the Governor. The terms of office of the trustees shall be as follows: Three of the trustees shall be appointed for a term of two years; three for three years; and three for four years. At the expiration of those terms, the appointments shall be made for periods of four years. In the event of any vacancy on the board, the vacancy shall be filled by appointment of the Governor for the unexpired term of the member causing the vacancy. The members of the board of trustees shall serve without compensation. (1955, c.

1372, art. 27, s. 1; 1963, c. 448, s. 30; 1969, c. 479; 1979, c. 462, s. 2; 1991, c. 184, s. 1; 2004-124, s. 8.6.)

Study of the North Carolina Center for Applied Textile Technology. — Session Laws 2004-124, ss. 8.6A(a)-(d), provide: "(a) The State Board of Community Colleges shall study the North Carolina Center for Applied Textile Technology (NCCATT). In the course of the study, the State Board shall consider:

"(1) The mission and purpose of the Center;

"(2) The Center's programs and course of study;

"(3) Any duplication of courses offered by community colleges;

"(4) The Center's expenditures, receipts, and potential funding mechanisms;

"(5) The population served by the Center, including students and industry; and

"(6) The Center's status within the Community College System. The State Board shall seek input, during the course of the study, from representatives of the North Carolina textile industry, members of the NCCATT Board of Trustees, the Department of Commerce, representatives of the College of Textiles at North Carolina State University, the Director of the Hosiery Technology Center at Catawba Valley Community College, and other interested parties.

"The State Board shall seek input, during the course of the study, from representatives of the North Carolina textile industry, members of the NCCATT Board of Trustees, the Department of Commerce, representatives of the College of Textiles at North Carolina State University, the Director of the Hosiery Technology Center at Catawba Valley Community College, and other interested parties.

"(b) The State Board shall determine whether the Center should (i) remain an independent institution under the Community College System, (ii) be administered by a community college, (iii) be dissolved and the property transferred from State to county ownership, or (iv) be otherwise administered.

"If the State Board determines that the Center should remain an independent institution under the Community College System or be administered by a community college, the State Board shall identify necessary changes to the Center's organization and funding structure, mission and purpose, programs or services currently offered, and governance.

"(c) The State Board shall consult with the Education Subcommittee of the Joint Legislative Commission on Governmental Operations on the results of the study and shall provide a written report on the results of the study to the Office of State Budget and Management, the chairs of the Joint Legislative Education Oversight Committee, and the chairs of the finance committees of the Senate and the House of Representatives, no later than October 30, 2004.

"(d) Notwithstanding Article 6 of Chapter 115D of the General Statutes or any other provision of law, the State Board of Community Colleges, in consultation with the Office of State Budget and Management, shall implement the results of the study by January 1, 2005."

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 8.6, effective July 1, 2004, deleted "the President of the North Carolina System of Community Colleges and" from the second sentence; and deleted "appointed by the Governor" from the third sentence and from the last sentence.

Chapter 116.
Higher Education.

Article 1.

The University of North Carolina.

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Article 30.

[Western] North Carolina Arboretum.

116-243. Board of directors established; appointments.

Article 1.
The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

William Friday Institute for Higher Education Leadership. — Session Laws 2004-124, ss. 6.28(a)-(c), provide: "(1) There is a serious and continuing need for systematic education and training and education within The University of North Carolina to prepare men and women to perform effectively in progressively responsible positions of administrative leadership in colleges and universities in North Carolina and the nation.

"(2) The Board of Governors of The University of North Carolina (UNC) and the staff in the Office of the President are in agreement that The University of North Carolina must provide a mechanism by which talented faculty and staff within the UNC system can move into administrative positions.

"(3) A significant component of increasing the strength of The University of North Carolina is increasing the administrative acumen of its faculty, department chairs, deans, and other administrators to prepare them for leadership positions.

"(4) Historically, academic administrators moved into their positions directly from the faculty, but the complexities of leadership make such changes nearly impossible today.

"(5) Business and industry focus on succession planning, climate surveys, and leadership development, but universities have been slower to respond to the need to develop talent within the organization.

"(6) Some universities have developed leadership programs, and the best of these programs nationally are those that are responsive to the culture of the institution or system.

"(7) Establishing an institute for higher education leadership development will help change the current pattern within the UNC system by providing ongoing professional development for faculty and administrators on UNC campuses.

"(8) Faculty and administrators will have opportunities to learn 'best practices' from their colleagues as well as from national experts in key areas, and models will be provided that can be transferred back to the campuses.

"(9) Administrative internships on campuses and at the Office of the President will provide aspiring administrators opportunities to experience new environments and to learn leadership skills throughobservation and participation.

"(10) It is critical that The University of North Carolina provide opportunities for faculty within the system to advance professionally without having to leave North Carolina.

"The Board of Governors of The University of North Carolina shall establish the William Friday Institute for Higher Education Leadership (the 'Institute'). The Board of Governors of The University of North Carolina shall also establish an advisory board for the Institute.

"The purpose of the Institute is to enable students, faculty, and administrators on the campuses of The University of North Carolina to explore and validate their interest in and fitness for careers in academic administration and to gain skills, insight, information, contacts, and experience through ongoing professional leadership development programs."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 2. Organization, Governance and Property of the University.

§ 116-3. Incorporation and corporate powers.

Editor's Note. —

Session Laws 2002-126, s. 8.3, provides: "The State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions, shall adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region. Each task force shall consist of at least one representative from each of the following: the regional economic development commission, the president, the board of trustees of each community college located in that region, the Chancellor, and the board of trustees of each university campus located in that region, and any additional persons as may be designated by the policy. The task force may appoint an executive committee and any subcommittees it deems appropriate.

"The policy shall direct each task force to develop a five-year vision plan for its economic development region. At a minimum, each vision plan shall determine the realistic economic development goals and the future job market in that region and shall identify community college and university courses currently offered or needed to effectuate the vision plan. The policy shall require the task forces to review and update their respective vision plans every five years.

"If the service area of any community college or university is in more than one economic development region, then the State Board of Community Colleges or the Board of Governors of The University of North Carolina, respectively, shall determine how the participation in the various task forces will be addressed."

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2003-126, s. 8.3, effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 116-3.3. Mediation matters.

(a) Evidence of statements made and conduct occurring in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall not be subject to discovery and shall be inadmissible in any proceeding in any action on the same claim or any other claim, administrative or judicial, except in a proceeding to enforce a signed settlement agreement. Such evidence is not a public record under Chapter 132 of the General Statutes. Any evidence discoverable or admissible prior to the mediation shall remain discoverable and admissible, whether or not it is presented or discussed during mediation.

(b) No mediator, person training to become a mediator, nor participant in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall be compelled to testify or produce evidence with respect to the mediation of the personnel matter in any civil proceeding, except to attest to the signing of any such agreement. (2004-154, s. 1.)

Editor's Note. — Session Laws 2004-154, s. 12, made this section effective August 2, 2004.

§ 116-4. Constituent institutions of the University of North Carolina.

CASE NOTES

Cited in Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004).

§ 116-7. General provisions concerning members of the Board of Governors.

Editor's Note. — Session Laws 2004-161, ss. 22.1 through 22.5. creates the UNC Board of Governors Study Commission. The Commission is to study the method of election or appointment of members of the Board of Governors, the length of the members' terms, the number of terms a member may serve, and the size of the Board of Governors. The Commission shall report its findings and any recommendations to the 2005 Regular Session of the General Assembly. The Commission shall terminate upon the filing of its final report.

For a prior similar provision, see Session Laws 2001-491, ss. 31.1 through 31.5.

§ 116-15. Licensing of certain nonpublic post-secondary educational institutions.

Local Modification. — Cabarrus Memorial Hospital: 1998-204, as amended by 2004-67.

Part 2A. Fiscal Accountability and Flexibility.

§ 116-30.1. Special responsibility constituent institutions.

Editor's Note. —

Session Laws 2003-284, s. 6.1, as amended by Session Laws 2004-124, s. 6.20, effective July 1, 2003, provides: "There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to carry on authorized activities included under each department's opera-

tions. All these cash balances, federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute, and shall be expended at the level of service authorized by the General Assembly. If the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, then the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from the Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund.

"Funds that become available from overrealized receipts in General Fund Codes and Highway Fund Codes may be used for new permanent employee positions or to raise the salary of existing employees only as follows:

"(1) As provided in G.S. 116-30.1, 116-30.2, 116-30.3, 116-30.4; or

"(2) If the Director of the Budget finds that the new permanent employee positions are necessary to maintain the function that generated the receipts at the level anticipated in the certified budget codes for that Fund. The Director of the Budget shall notify the President Pro Tempore of the Senate, the Speakers of the House of Representatives, the Chairs of the Appropriations Committees of the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office that he intends to make such a finding at least 10 days before he makes the finding. The notification shall set out the reason the positions are necessary to maintain the function.

"The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter the General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 116-30.2. Appropriations to special responsibility constituent institutions and to the North Carolina School of Science and Mathematics.

(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.

(b) The North Carolina School of Science and Mathematics is authorized to be designated as a special responsibility constituent institution for the purposes of G.S. 116-30.1, G.S. 116-30.3, G.S. 116-30.4, G.S. 116-30.5, G.S.

116-30.6, and G.S. 116-31.10. In addition, all General Fund appropriations made by the General Assembly for continuing operations of the North Carolina School of Science and Mathematics shall be made in the form of a single sum to each budget code of the School for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), the North Carolina School of Science and Mathematics may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Director of the School to be calculated to maintain and advance the programs and services of the School, consistent with the directives and policies of the Board of Trustees of the North Carolina School of Science and Mathematics. The preparation, presentation, and review of General Fund budget requests of the North Carolina School of Science and Mathematics shall be conducted in the same manner as are requests of the constituent institutions. The quarterly allotment procedure established under G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of the North Carolina School of Science and Mathematics. All General Fund monies so appropriated to the North Carolina School of Science and Mathematics shall be recorded, reported, and audited in the same manner as are General Fund appropriations to constituent institutions of The University of North Carolina. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i); 1997-443, s. 10.8; 2001-449, s. 1; 2004-124, s. 9.6.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2003-124, s. 9.6, effective July 1, 2004, inserted "G.S. 116-30.3" in the first sentence of subsection (b).

Part 3. Constituent Institutions.

§ 116-33. Powers and duties of the boards of trustees.

Editor's Note. — Session Laws 2004-124, s. 9.7(b), provides: "The University of North Carolina at Chapel Hill shall report to the Joint Legislative Commission on Governmental Operations by July 1, 2006, and biannually thereafter, on progress locating a replacement facility for the Area Health Education Center. The Departments of Administration and Transportation shall assist the University of North Carolina at Chapel Hill as needed to secure a replacement facility."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

CASE NOTES

Broad authority granted to University of North Carolina (UNC) campus trustees under G.S. 116-33, including the authority to assess fines for the loss, damage, or late return of campus library materials, is intended to promote the remedial purpose of keeping the cost of an education at the several UNC campuses as low as possible; because G.S. 116-33 advances this remedial purpose, the statute is constitutional under N.C. Const. art. IX, § 9, which is a co-equal provision with N.C. Const. art. IX, § 7. Thus, the clear proceeds of pay-

ments collected pursuant to G.S. 116-33 are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

§ 116-36. Endowment fund.

OPINIONS OF ATTORNEY GENERAL

University of North Carolina Center for Public Television. — The annotation appearing under this catchline in the main volume [Volume 14, pp. 580-581] has been removed at the direction of the Revisor of Statutes. The Opinion of the Attorney General from which that annotation was taken was prematurely posted on the Attorney General's web site, and never received final approval.

§ 116-37.1. Center for public television.

OPINIONS OF ATTORNEY GENERAL

Agreements for Use of Facilities. — The annotation appearing under this catchline in the main volume [Volume 14, p. 592] has been removed at the direction of the Revisor of Statutes. The Opinion of the Attorney General from which that annotation was taken was prematurely posted on the Attorney General's web site, and never received final approval.

§ 116-40.7. Internal auditors.

(a) Internal auditors within The University of North Carolina and its constituent institutions shall provide independent reviews and analyses of various functions and programs within The University of North Carolina that will provide management information to promote accountability, integrity, and efficiency within The University of North Carolina.

(b) An internal auditor shall have access to any records, data, or other information of The University of North Carolina or the relevant constituent institution that the internal auditor believes necessary to carry out the internal auditor's duties.

(c) An internal auditor shall maintain, for 10 years, a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the internal auditor's authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of that auditor's office shall be retained in accordance with Chapter 132 of the General Statutes. To promote cooperation and avoid unnecessary duplication of audit effort, audit work papers related to issued audit reports shall be, unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal governments in connection with some matter officially before them. Except as otherwise provided in this subsection, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential and shall not be open to examination or inspection under G.S. 132-6. Audit reports shall be public records to the extent that they do not include information that, under State laws, is confidential and exempt from Chapter 132 of the General Statutes or would compromise the security systems of The University of North Carolina. (2004-203, s. 46.)

Editor's Note. — Session Laws 2004-203, s. 84, made this section effective August 17, 2004.

Part 6. Traffic and Parking.

§ 116-44.4. Regulation of traffic and parking and registration of motor vehicles.

CASE NOTES

Because the North Carolina General Assembly enacted G.S. 116-44.4 pursuant to a clear grant of constitutional authority to establish a mechanism for administering the "maintenance and management" of traffic and parking on each University of North Carolina campus, G.S. 116-44.4 is constitutional under N.C. Const. art. IX, § 8, which is a co-equal provision with N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Proceeds of penalties that are collected for violation of campus traffic and parking ordinances as "infractions" under G.S. 116-44.4(g) are subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

"Civil penalties" imposed by G.S. 116-44.4(h), which are intended to compensate campuses for the expense of establishing and maintaining parking-and transportation-related services, are remedial in nature and thus are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Part 7. Fire Safety.

§ 116-44.8. Fire Safety Loan Fund.

Editor's Note. — Session Laws 2004-124, s. 2.2(f), provides: "Notwithstanding G.S. 116-44.8, two hundred fifty thousand dollars ($250,000) of the cash balance remaining in the Fire Safety Loan Fund (Budget Code 63414, Fund 6510) on July 1, 2004, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers). These funds shall be used to support General Fund appropriations for the 2004-2005 fiscal year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community

colleges under the jurisdiction of the State Board of Community Colleges.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;

(2) No persons shall be deemed solely by reason of marriage to a person domiciled in North Carolina to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;

(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any nonresident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(h1) Any member of a North Carolina National Guard unit who is a nonresident shall be eligible to be charged the in-State tuition rate and shall pay the full amount of the in-State tuition rate and applicable mandatory fees. This subsection applies to members in a reserve or active duty status.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent for North Carolina individual income tax purposes. The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

(1) Upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and

(2) Begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

(1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and

(2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State.

(*l*) Any person who ceases to be enrolled at or graduates from an institution of higher education while classified as a resident for tuition purposes and subsequently abandons North Carolina domicile shall be permitted to reenroll at an institution of higher education as a resident for tuition purposes without necessity of meeting the 12-month durational requirement of this section if the person reestablishes North Carolina domicile within 12 months of abandon-

ment of North Carolina domicile and continuously maintains the reestablished North Carolina domicile at least through the beginning of the academic term(s) for which in-State tuition status is sought. The benefit of this subsection shall be accorded not more than once to any one person. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836; 1981, cc. 471, 905; 1987, c. 564, s. 19; 1989, c. 728, s. 1.3; 1991 (Reg. Sess., 1992), c. 1030, s. 32; 2004-130, s. 2.)

Effect of Amendments. — Session Laws 2004-130, s. 2, effective August 1, 2004, inserted subsection (h1).

§ 116-143.3. Tuition of active duty personnel in the armed services.

(a) Definitions. — The following definitions apply in this section:

(1) The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.

(2) The term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing.

(3) The term "tuition assistance" shall be used as defined in the United States Department of Defense Directive 1322.8, implementing 10 U.S.C. § 2007.

(b) Any active duty member of the armed services qualifying for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the in-State tuition rate and applicable mandatory fees for enrollments while the member of the armed services is abiding in this State incident to active military duty in this State. In the event the active duty member of the armed services is reassigned outside of North Carolina, the member shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member is continuously enrolled in the degree or other program in which the member was enrolled at the time the member is reassigned.

(b1), (b2) Repealed by Session Laws 2004-130, s. 1, effective August 1, 2004.

(c) Any dependent relative of a member of the armed services who is abiding in this State incident to active military duty, as defined by the Board of Governors of The University of North Carolina and by the State Board of Community Colleges while sharing the abode of that member shall be eligible to be charged the in-State tuition rate, if the dependent relative qualifies for admission to an institution of higher education as defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the requirements of the Selective Service System, if applicable, in order to be accorded this benefit. In the event the member of the armed services is reassigned outside of North Carolina, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is reassigned.

(d) The burden of proving entitlement to the benefit of this section shall lie with the applicant therefor.

(e) A person charged less than the out-of-state tuition rate solely by reason of this section shall not, during the period of receiving that benefit, qualify for or be the basis of conferring the benefit of G.S. 116-143.1(g), (h), (i), (j), (k), or (*l*). (1983 (Reg. Sess., 1984), c. 1034, s. 57; 1985, c. 39, s. 1; c. 479, s. 69; c. 757, s. 154; 1987, c. 564, § 7; 1997-443, s. 10.2; 2003-284, s. 8.16(a); 2004-130, s. 1.)

Effect of Amendments. —
Session Laws 2004-130, s. 1, effective August 1, 2004, rewrote subsection (b); repealed subsections (b1) and (b2); and substituted "is reassigned outside of North Carolina, the dependent relative shall continue to be eligible for the in-State tuition rate and applicable mandatory fees so long as the dependent relative is continuously enrolled in the degree or other program in which the dependent relative was enrolled at the time the member is reassigned" for "removes his abode from North Carolina during an academic year, the dependent relative shall continue to be eligible for the in-State tuition rate during the remainder of that academic year" in the last sentence of subsection (c).

Article 29.

The North Carolina School of Science and Mathematics.

§ 116-238.1. Full tuition grant for graduates who attend a State university.

(a) There is granted to each State resident who graduates from the North Carolina School of Science and Mathematics and who enrolls as a full-time student in a constituent institution of The University of North Carolina a sum to be determined by the General Assembly as a tuition grant. The tuition grant shall be for four consecutive academic years and shall cover the tuition cost at the constituent institution in which the student is enrolled. The tuition grant shall be distributed to the student as provided by this section.

(b) The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from the appropriate constituent institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times it prescribes the grant to the constituent institution on behalf, and to the credit, of the student.

(c) In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority.

(d) In the event there are not sufficient funds to provide each eligible student with a full grant:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Any remaining funds shall revert to the General Fund.

(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of tuition of the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of tuition at the constituent institution for which the tuition grant is awarded, then the amount of the tuition grant shall be reduced by an appropriate amount determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid

covering the cost of tuition received by the student, including the tuition grant under this section, shall not exceed the cost of tuition for the constituent institution at which the student is enrolled. (2003-284, s. 9.4(a); 2004-203, s. 47.)

Editor's Note. —

Session Laws 2004-124, ss. 9.6A(a)-(c), provides: "(a) It is the intent of the General Assembly that the Board of Governors of The University of North Carolina review, evaluate, and study G.S. 116-238.1, which provides a four-year tuition grant to any North Carolina resident who graduates from the North Carolina School of Science and Mathematics and enrolls as a full-time student in a constituent institution of The University of North Carolina.

"(b) The North Carolina School of Science and Mathematics shall collect data on the median family income of the students attending the school.

"(c) The President of the North Carolina School of Science and Mathematics and the Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee regarding the information collected in compliance with subsections (a) and (b) of this section and any findings and recommendations of the Board of Governors. The Joint Legislative Education Oversight Committee shall report to the 2005 General Assembly the information received from the President of the North Carolina School of Science and Mathematics and the Board of Governors and the findings and recommendations of the Board of Governors, along with the Committee's own findings and recommendations regarding the continuation of the tuition grant program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-203, s. 47, effective August 17, 2004, added subsection (f).

Article 30.

[Western] North Carolina Arboretum.

§ 116-243. Board of directors established; appointments.

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms.

(4) The President of The University of North Carolina or the President's designee to serve ex officio.

(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio.

(6) The President of Western North Carolina Arboretum, Inc., to serve ex officio.

(7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs.

(8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least one year. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors. (1985 (Reg. Sess., 1986), c. 1014, s. 98; 1995, c. 490, s. 63; 2003-102, s. 1; 2004-203, s. 48.)

Effect of Amendments. — Session Laws 2004-203, s. 48, effective August 17, 2004, substituted "the President's designee" for "his designee" in subdivision (4); and made minor punctuation changes throughout the section.

Article 32.

Health Information.

§ 116-260. Information on meningococcal disease immunization.

Editor's Note. — Session Laws 2003-194, s. 2, as amended by Session Laws 2004-203, s. 73, provides: "This act is effective when it becomes law and applies to the 2003-2004 academic year, beginning with the Spring 2004 semester, and each subsequent year."

Chapter 116B.

Escheats and Abandoned Property.

Article 1.

Escheats.

§ 116B-7. Distribution of fund.

Editor's Note. —

Session Laws 2003-284, s. 18.5(c), as amended by Session Laws 2004-124, s. 19.4, provides: "In accordance with G.S. 116B-7(b) as enacted by this act, for the 2003-2004 and 2004-2005 fiscal years, there is appropriated from the Escheat Fund to the Department of Administration the amount of three million nine hundred three thousand three hundred twenty-four dollars ($3,903,324) for the 2004-2005 fiscal year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Chapter 116C.

Continuum of Education Programs.

§ 116C-3. Strategic design for a continuum of education programs.

High School Workforce Development Program. — Session Laws 2004-124, ss. 7.22(a) and (b), provide: "(a) Funds are appropriated in this act for a high school workforce development program. The purpose of the program shall be to identify students who may not plan to attend or be adequately prepared to attend a two- or four-year degree program and to provide the assistance those students need to earn an Associate Degree the year after their senior year in high school. The Department of Public Instruction shall work closely with the Education Cabinet and the New Schools Project in administering the program.

"These funds shall be used to establish five pilot projects in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and community college curricula operate seamlessly and meet the needs of participating employers.

"(b) The State Board of Education shall conduct an annual evaluation of this program. The evaluation shall include (i) an assessment of the overall impact of this program on student achievement, retention, and employability, (ii) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability, and (iii) recommendations for continuance and improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division, by September 15 of each year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Chapter 116D.

Higher Education Bonds.

Article 1.

General Provisions.

§ 116D-1. Definitions.

Editor's Note. —

Session Laws 2000-3, s. 2, as amended by Session Laws 2001-424, s. 31.9, by Session Laws 2002-126, s. 9.3, by Session Laws 2003-284, s. 9.3, and by Session Laws 2004-124, s. 9.4, makes provisions for the proceeds of the University Improvement General Obligation Bonds, and Session Laws 2000-3, s. 3, makes provisions for proceeds of Community College General Obligation Bonds. See Editor's Notes at G.S. 116D-6 and 116D-41.

Chapter 119.

Gasoline and Oil Inspection and Regulation.

Article 3.

Gasoline and Oil Inspection.

Sec.
119-15.1. List of persons who must have a license.
119-19. Authority of Secretary to cancel a license.

Article 3.

Gasoline and Oil Inspection.

§ 119-15.1. List of persons who must have a license.

(a) License. — A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.

(2) A kerosene distributor.

(3) A kerosene terminal operator.

(b) Exception. — A kerosene supplier license is not required if the supplier is licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene license. A kerosene terminal operator license is not required if the terminal operator is licensed as a terminal operator under Part 2 of Article 36C of Chapter 105 of the General Statutes. (2003-349, s. 10.14; 2004-170, s. 33; 2004-203, s. 82.)

Editor's Note. — Session Laws 2003-349, s. 12, as amended by Session Laws 2004-203, s. 82, made this section effective January 1, 2004.

Effect of Amendments. — Session Laws 2004-170, s. 33, effective August 2, 2004, substituted "terminal operator" for "supplier" two times in subsection (b).

§ 119-15.2. How to apply for a license.

Editor's Note. — Session Laws 2003-349, s. 12, as amended by Session Laws 2004-203, s. 82, made this section effective January 1, 2004.

§ 119-15.3. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.

Editor's Note. — Session Laws 2003-349, s. 12, as amended by Session Laws 2004-203, s. 82, made this section effective January 1, 2004.

§ 119-19. Authority of Secretary to cancel a license.

The Secretary of Revenue may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel a license issued under this Article or under Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond. (1933, c. 544, s. 10; 1967, c. 1110, s. 12; 1973, c. 476, s. 193; 1995, c. 390, s. 24; 2004-170, s. 34.)

Effect of Amendments. — Session Laws 2004-170, s. 34, effective August 2, 2004, in the first paragraph, substituted "this Article" for "G.S. 119-16.2" two times, and inserted "or under" preceding "Article 36C or 36D."

Chapter 120.

General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

Sec.
120-1. Senators.
120-2. House apportionment specified.
120-2.3. Contents of judgments invalidating apportionment or redistricting acts.
120-2.4. Opportunity for General Assembly to remedy defects.
120-2.5. Direct appeal to Supreme Court.

Article 1A.

Legislative Retirement System.

120-4.22A. Post-retirement increases in allowances.
120-4.27. Death benefit.

Article 6.

Acts, Journals, and Reports to the General Assembly.

120-29.5. State agency reports to the General Assembly.

Article 6A.

Submission of Acts.

120-30.9B. Statewide statutes; State Board of Elections.

Article 8.

Elected Officers.

120-37. Elected officers; salaries; staff.

Article 9A.

Lobbying.

120-47.2. Registration procedure.

Article 12L.

Revenue Laws Study Committee.

120-70.108. Property Tax Subcommittee.

Article 12N.

Joint Legislative Growth Strategies Oversight Committee.

Sec.
120-70.120. (Effective until January 16, 2007) Creation and membership of Joint Legislative Growth Strategies Oversight Committee.
120-70.121. (Effective until January 16, 2007) Purpose and powers of Committee.
120-70.122. (Effective until January 16, 2007) Organization of Committee.

Article 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

120-85. (Effective January 1, 2006) Definitions.
120-87. (Effective January 1, 2006) Disclosure of confidential information.

Part 2. Statement of Economic Interest.

120-96. (Effective January 1, 2006) Contents of statement.

Part 3. Legislative Ethics Committee.

120-99. Creation; composition.
120-100. Term of office; vacancies.

Article 16.

Legislative Appointments to Boards and Commissions.

120-122. Vacancies in legislative appointments.
120-123. Service by members of the General Assembly on certain boards and commissions.

Article 26.

Joint Legislative Oversight Committee on Information Technology.

120-230. Creation and purpose of the Joint Legislative Oversight Committee on Information Technology.
120-231. Committee duties; reports.
120-232. Committee membership; terms; organization; vacancies.

Article 1.

Apportionment of Members; Compensation and Allowances.

§ 120-1. Senators.

(a) [**See Editor's note.** For the purpose of nominating and electing members of the Senate in 2004 and every two years thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts so that each District elects one Senator, and the composition of each district is as follows:]

District 1: Beaufort County, Camden County, Currituck County, Dare County, Hyde County, Pasquotank County, Tyrrell County, Washington County.

District 2: Carteret County, Craven County, Pamlico County.

District 3: Edgecombe County, Martin County, Pitt County: Precinct Arthur: Tract 16: Block Group 1: Block 1000, Block 1001, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1016, Block 1017; Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023; Tract 17: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077; Tract 18: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Precinct Ayden B: Tract 12: Block Group 2: Block 2006, Block 2007; Tract 14: Block Group 2: Block 2038; Block Group 3, Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4010, Block 4011; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5031, Block 5032, Block 5033; Precinct Belvoir, Precinct Bethel, Precinct Carolina, Precinct Chicod, Precinct Falkland, Precinct Fountain: Tract 19: Block Group 1: Block 1002, Block 1003, Block 1010, Block 1011, Block 1012, Block 1018; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2048; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3033; Precinct Greenville 01, Precinct Greenville 03, Precinct Greenville 04, Precinct Greenville 05A, Precinct Greenville 05B, Precinct Greenville 06, Precinct Greenville 09: Tract 3: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1008, Block 1009, Block 1010, Block 1018, Block 1019, Block 1998, Block 1999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057; Tract 9: Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2055, Block 2056, Block 2057, Block 2059, Block 2993, Block 2994, Block 2995, Block 2996; Tract 10: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4997; Precinct Greenville 12A: Tract 6: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block

2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2026; Precinct Grifton, Precinct Grimesland, Precinct Pactolus, Precinct Simpson A, Precinct Simpson B, Precinct Swift Creek.

District 4: Bertie County, Chowan County, Gates County, Halifax County, Hertford County, Northampton County, Perquimans County.

District 5: Greene County, Pitt County: Precinct Arthur: Tract 6: Block Group 2: Block 2018, Block 2021; Tract 16: Block Group 1: Block 1002, Block 1003, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1020; Block Group 2: Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2049, Block 2050, Block 2054; Block Group 3: Block 3005, Block 3006; Precinct Ayden A, Precinct Ayden B: Tract 12: Block Group 1: Block 1033, Block 1034; Tract 14: Block Group 1: Block 1005, Block 1012, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1059, Block 1060, Block 1061, Block 1062; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2039, Block 2041; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5015, Block 5016, Block 5025, Block 5026, Block 5027, Block 5028; Precinct Farmville A, Precinct Farmville B, Precinct Fountain: Tract 18: Block Group 3: Block 3001; Tract 19: Block Group 1: Block 1044; Block Group 2: Block 2001, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2047; Block Group 3: Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032; Precinct Greenville 07A, Precinct Greenville 07B, Precinct Greenville 07C, Precinct Greenville 08A, Precinct Greenville 08B, Precinct Greenville 09: Tract 1: Block Group 5: Block 5024, Block 5025; Tract 2: Block Group 5: Block 5022, Block 5023, Block 5024, Block 5025; Tract 3: Block Group 1: Block 1007, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2037; Block Group 4: Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4999; Tract 4: Block Group 3: Block 3005, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Block Group 4: Block 4004, Block 4005; Precinct Greenville 10A, Precinct Greenville 10B, Precinct Greenville 11A, Precinct Greenville 11B, Precinct Greenville 12A: Tract 6: Block Group 2: Block 2019, Block 2020, Block 2022, Block 2023, Block 2024, Block 2025, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044; Tract 16: Block Group 2: Block 2035, Block 2036; Precinct Greenville 12B, Precinct Winterville Central A, Precinct Winterville Central B, Precinct Winterville East; Wayne County: Precinct 02: Tract 2: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019; Block Group 2: Block 2000, Block 2001; Block Group 3; Tract 3.01: Block Group

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District 6: Jones County, Onslow County.

District 7: Franklin County, Granville County, Vance County, Warren County.

District 8: Brunswick County, Columbus County, Pender County.

District 9: New Hanover County.

District 10: Duplin County, Lenoir County, Sampson County.

District 11: Nash County, Wilson County.

District 12: Johnston County, Wayne County: Precinct 01, Precinct 02: Tract 2: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1020, Block 1027; Tract 3.01: Block Group 4: Block 4000, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009; Precinct 03, Precinct 04, Precinct 05, Precinct 08, Precinct 09, Precinct 16, Precinct 24, Precinct 25: Tract 8: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Tract 9: Block Group 3: Block 3010; Block Group 6: Block 6001,

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District 13: Hoke County, Robeson County.

District 14: Wake County: Precinct 01-12: Tract 527.01: Block Group 2: Block 2028, Block 2029, Block 2030, Block 2031, Block 2036, Block 2037, Block 2038; Precinct 01-18: Tract 527.01: Block Group 1: Block 1013, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Precinct 01-19, Precinct 01-20: Tract 507: Block Group 1, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Tract 521.02: Block Group 1: Block 1009; Precinct 01-21: Tract 521.01: Block Group 2: Block 2033, Block 2035, Block 2036, Block 2037, Block 2038, Block 2042, Block 2043; Tract 522.02: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1039, Block 1040, Block 1041, Block 1050, Block 1052, Block 1053, Block 1056, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1069, Block 1080; Precinct 01-22, Precinct 01-26: Tract 507: Block Group 3: Block 3012, Block 3013; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008; Tract 508: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Block Group 2: Block 2000, Block 2001, Block 2002; Block Group 3; Tract 509: Block Group 1: Block 1019; Block Group 2: Block 2000, Block 2001, Block 2009, Block 2010; Tract 521.01: Block Group 2: Block 2000; Precinct 01-28, Precinct 01-34, Precinct 01-35: Tract 508: Block Group 1: Block 1011, Block 1012; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Tract 509: Block Group 2: Block 2002, Block 2003, Block 2006, Block 2007, Block 2008, Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3019, Block 3020, Block 3021; Tract 521.01: Block Group 1, Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2039, Block 2040, Block 2041, Block 2044, Block 2045; Tract 522.01: Block Group 1: Block 1021; Tract 522.02: Block Group 1: Block 1000; Precinct 01-38, Precinct 01-40, Precinct 01-46, Precinct 01-50, Precinct 09-01, Precinct 09-02, Precinct 09-03, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 13-01, Precinct 13-03, Precinct 13-05: Tract 540.10: Block Group 1: Block 1057, Block 1060, Block 1061, Block 1062, Block 1063, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2025, Block 2026, Block 2027, Block 2028; Precinct 13-06: Tract 540.10: Block Group 1: Block 1000, Block 1058, Block 1059; Precinct 13-07, Precinct 16-01: Tract 528.03: Block Group 2: Block 2033, Block 2035; Tract 528.04: Block Group 1: Block 1000, Block 1001, Block 1002; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block

2048; Precinct 16-02, Precinct 16-08, Precinct 17-01, Precinct 17-02, Precinct 17-03, Precinct 17-04, Precinct 17-05, Precinct 17-06, Precinct 17-07, Precinct 17-08, Precinct 17-09, Precinct 17-10, Precinct 17-11, Precinct 19-01, Precinct 19-02: Tract 542.01: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5142, Block 5143; Tract 542.02: Block Group 2: Block 2013, Block 2014; Precinct 19-04, Precinct 19-07: Tract 542.01: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4999; Tract 542.02: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2030, Block 2996; Precinct 19-08.

District 15: Wake County: Precinct 01-11, Precinct 01-15, Precinct 01-17, Precinct 01-18: Tract 526.02: Block Group 2: Block 2009; Tract 527.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1017, Block 1018, Block 1019; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2999; Precinct 01-29: Tract 515.01: Block Group 1: Block 1000, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Precinct 01-30, Precinct 01-36, Precinct 01-37, Precinct 01-39, Precinct 01-42, Precinct 01-43, Precinct 01-44, Precinct 01-45, Precinct 01-47, Precinct 01-51, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 07-02, Precinct 07-03, Precinct 07-04, Precinct 07-05, Precinct 07-06, Precinct 07-07, Precinct 07-09, Precinct 07-11, Precinct 07-12, Precinct 07-13, Precinct 08-01, Precinct 08-02, Precinct 08-03, Precinct 08-04, Precinct 08-05, Precinct 08-06, Precinct 08-07, Precinct 08-08, Precinct 08-09, Precinct 13-02, Precinct 13-04, Precinct 13-05: Tract 540.10: Block Group 1: Block 1046, Block 1047, Block 1050, Block 1052, Block 1053, Block 1056, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084; Precinct 13-06: Tract 540.10: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1031, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1048, Block 1049, Block 1051, Block 1054, Block 1055; Precinct 14-01, Precinct 14-02, Precinct 19-02: Tract 542.01: Block Group 1, Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5113, Block 5114, Block 5115, Block 5116, Block 5117, Block 5118, Block 5119, Block 5120, Block 5121, Block 5122, Block 5123, Block 5124, Block 5125, Block 5132, Block 5133, Block 5134, Block 5135, Block 5136, Block 5137, Block 5138, Block 5139, Block 5140, Block 5141; Precinct 19-03, Precinct 19-05, Precinct 19-06, Precinct 19-07: Tract 540.10: Block Group 2: Block 2000, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023.

District 16: Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-03, Precinct 01-04, Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-09, Precinct 01-10, Precinct 01-12: Tract 517: Block Group 1: Block 1008; Tract 518: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Block Group 3; Tract 527.01: Block Group 2: Block 2039; Precinct 01-13, Precinct 01-14, Precinct 01-16, Precinct 01-20: Tract 501: Block Group 1: Block 1052, Block 1053, Block 1054, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1102; Tract 507: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003; Precinct 01-21: Tract 522.02: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1042, Block 1043, Block 1044, Block 1045, Block 1051, Block 1997, Block 1998, Block 1999; Block Group 2, Block Group 3; Precinct 01-23, Precinct 01-25, Precinct 01-26: Tract 501: Block Group 1: Block 1090, Block 1091, Block 1092, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117; Tract 509: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1021; Precinct 01-27, Precinct 01-29: Tract 515.01: Block Group 1: Block 1008; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2017, Block 2018, Block 2019; Tract 515.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Precinct 01-31, Precinct 01-32, Precinct 01-33, Precinct 01-35: Tract 508: Block Group 2: Block 2011, Block 2012, Block 2013; Tract 509: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2004, Block 2005, Block 2013; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3016, Block 3017, Block 3018; Tract 522.01: Block Group 1: Block 1000, Block 1001, Block 1018, Block 1019, Block 1020; Tract 522.02: Block Group 1: Block 1001, Block 1002; Precinct 01-41, Precinct 01-48, Precinct 01-49, Precinct 04-01, Precinct 04-02, Precinct 04-03, Precinct 04-04: Tract 535.07: Block Group 2: Block 2001, Block 2002; Block Group 3: Block 3007, Block 3008, Block 3009; Precinct 04-05, Precinct 04-08, Precinct 04-09, Precinct 04-11, Precinct 04-12, Precinct 04-15, Precinct 04-17, Precinct 04-18, Precinct 04-20, Precinct 04-21, Precinct 05-01, Precinct 05-02, Precinct 05-03, Precinct 07-01, Precinct 07-10, Precinct 11-01, Precinct 11-02, Precinct 18-01: Tract 523.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1021, Block 1022, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041; Tract 523.02: Block Group 2: Block 2003, Block 2004, Block 2005, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2999; Precinct 18-06: Tract 523.01: Block Group 1: Block 1003, Block 1005, Block 1006, Block 1017, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 524.04: Block Group 1: Block 1043, Block 1996, Block 1997, Block

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District 17: Wake County: Precinct 03-00, Precinct 04-04: Tract 535.08: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Precinct 04-06, Precinct 04-07, Precinct 04-10, Precinct 04-13, Precinct 04-14, Precinct 04-16, Precinct 04-19, Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-05, Precinct 12-06, Precinct 12-07, Precinct 15-01, Precinct 15-02, Precinct 15-03, Precinct 15-04, Precinct 16-01: Tract 528.05: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1061; Precinct 16-03, Precinct 16-04, Precinct 16-05, Precinct 16-06, Precinct 16-07, Precinct 16-09, Precinct 18-01: Tract 530.02: Block Group 2: Block 2019, Block 2020, Block 2021; Precinct 18-02, Precinct 18-03, Precinct 18-04, Precinct 18-05, Precinct 18-06: Tract 530.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1044, Block 1045, Block 1046, Block 1049, Block 1050, Block 1993; Precinct 18-07, Precinct 18-08: Tract 530.01: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Block Group 2: Block 2028, Block 2029, Block 2030, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2044, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2164, Block 2165; Precinct 20-01, Precinct 20-02: Tract 534.03: Block Group 2: Block 2013, Block 2014, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block

2051, Block 2052, Block 2054, Block 2055, Block 2056, Block 2057; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011; Precinct 20-03, Precinct 20-04, Precinct 20-05, Precinct 20-06, Precinct 20-07, Precinct 20-08, Precinct 20-09, Precinct 20-10.

District 18: Chatham County, Durham County: Precinct 03: Tract 4.01: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 4.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1043, Block 1048; Tract 5: Block Group 1: Block 1003; Precinct 04: Tract 4.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023; Tract 4.02: Block Group 1: Block 1013, Block 1014; Precinct 05: Tract 5: Block Group 1: Block 1004, Block 1005; Tract 15.01, Tract 15.02; Precinct 06: Tract 6: Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2026, Block 2027, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043; Precinct 16, Precinct 27, Precinct 35, Precinct 36, Precinct 38, Precinct 39, Precinct 43, Precinct 48, Precinct 50, Precinct 51, Precinct 53, Precinct 54; Lee County.

District 19: Bladen County, Cumberland County: Precinct Alderman, Precinct Arran Hills, Precinct Beaver Dam & Cedar Creek, Precinct Black River, Precinct Brentwood, Precinct Cross Creek 01, Precinct Cross Creek 02, Precinct Cross Creek 08, Precinct Cross Creek 10, Precinct Cross Creek 11, Precinct Cross Creek 12, Precinct Cross Creek 14: Tract 7: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Precinct Cross Creek 15, Precinct Cross Creek 18, Precinct Cross Creek 20, Precinct Cross Creek 29, Precinct Cross Creek 30, Precinct Cross Creek 31, Precinct Cross Creek 34, Precinct Cumberland 1, Hope Mills 1, & Stoney Point, Precinct Cumberland 2, Precinct Cumberland 3, Precinct Eastover, Precinct Hope Mills 2, Precinct Hope Mills 3, Precinct Judson-Vander, Precinct Linden, Precinct Pearces Mill 2, Precinct Pearces Mill 3, Precinct Pearces Mill 4, Precinct Sherwood, Precinct Stedman, Precinct Wade.

District 20: Durham County: Precinct 01, Precinct 02, Precinct 03: Tract 4.01: Block Group 3: Block 3001, Block 3002, Block 3003; Tract 4.02: Block Group 1: Block 1001, Block 1002, Block 1025, Block 1026, Block 1029, Block 1030, Block 1041, Block 1042, Block 1044, Block 1045, Block 1046, Block 1047; Tract 5: Block Group 1: Block 1001, Block 1002; Precinct 04: Tract 4.01: Block Group 1: Block 1010, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024; Block Group 2: Block 2001; Precinct 05: Tract 5: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Tract 6: Block Group 2: Block 2000, Block 2001, Block 2002; Precinct 06: Tract 5: Block Group 3: Block 3006, Block 3007; Tract 6: Block Group 2: Block 2003, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2022, Block

2023, Block 2024, Block 2025, Block 2028, Block 2029; Precinct 07, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 24, Precinct 25, Precinct 26, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 37, Precinct 40, Precinct 41, Precinct 42, Precinct 44, Precinct 45, Precinct 46, Precinct 47, Precinct 49, Precinct 52.

District 21: Cumberland County: Precinct Auman, Precinct Cliffdale West, Precinct Cross Creek 03, Precinct Cross Creek 04, Precinct Cross Creek 05, Precinct Cross Creek 06, Precinct Cross Creek 07, Precinct Cross Creek 09, Precinct Cross Creek 13, Precinct Cross Creek 14: Tract 9: Block Group 2: Block 2012; Block Group 3, Block Group 6: Block 6004, Block 6005, Block 6006, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013; Tract 20: Block Group 1: Block 1000, Block 1018; Tract 21: Block Group 2, Block Group 5; Precinct Cross Creek 16, Precinct Cross Creek 17, Precinct Cross Creek 19, Precinct Cross Creek 21, Precinct Cross Creek 22, Precinct Cross Creek 23, Precinct Cross Creek 24, Precinct Cross Creek 25, Precinct Cross Creek 26, Precinct Cross Creek 27, Precinct Cross Creek 28, Precinct Cross Creek 32, Precinct Cross Creek 33, Precinct Lake Rim, Precinct Long Hill, Precinct Manchester, Precinct Montibello, Precinct Morganton Rd 2, Precinct Spring Lake, Precinct Westarea.

District 22: Harnett County, Moore County.

District 23: Orange County, Person County.

District 24: Alamance County, Caswell County.

District 25: Anson County, Richmond County, Scotland County, Stanly County.

District 26: Guilford County: Precinct Center Grove North, Precinct Clay North 1, Precinct Clay North 2, Precinct Clay South, Precinct Deep River North, Precinct Fentress 2, Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct GB 06: Tract 154: Block Group 6: Block 6006; Precinct GB 39: Tract 161.01: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct GB 40A: Tract 160.02: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012; Tract 161.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1999; Precinct GB 41, Precinct GB 64: Tract 160.04: Block Group 4: Block 4063, Block 4064, Block 4065, Block 4066, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1002, Block 1003; Precinct Gibsonville, Precinct Greene, Precinct Jefferson 1: Tract 128.03: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1031; Tract 153: Block Group 1: Block 1004, Block 1005, Block 1013, Block 1014, Block 1025, Block 1026, Block 1027, Block 1028, Block 1056, Block 1057, Block 1058; Block Group 2; Tract 154: Block Group 5: Block 5027, Block 5028, Block 5029, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5048, Block 5049; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6007, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019; Precinct Jefferson 2: Tract 128.03: Block Group 1: Block 1024, Block 1028, Block 1029, Block 1030, Block 1032; Tract 153: Block Group 3: Block 3006,

Block 3007, Block 3008, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035; Precinct Jefferson 4, Precinct Madison North, Precinct Madison South, Precinct Monroe 3, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Stokesdale, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Washington North, Precinct Washington South; Rockingham County.

District 27: Guilford County: Precinct Center Grove 1, Precinct Center Grove 2, Precinct Center Grove 3, Precinct GB 01, Precinct GB 02, Precinct GB 07, Precinct GB 08, Precinct GB 09, Precinct GB 10, Precinct GB 11, Precinct GB 12, Precinct GB 13, Precinct GB 14, Precinct GB 15, Precinct GB 16, Precinct GB 17, Precinct GB 18, Precinct GB 19, Precinct GB 20, Precinct GB 21, Precinct GB 22, Precinct GB 23, Precinct GB 24, Precinct GB 25, Precinct GB 26, Precinct GB 27, Precinct GB 28, Precinct GB 29, Precinct GB 30, Precinct GB 31, Precinct GB 32, Precinct GB 33, Precinct GB 34, Precinct GB 35, Precinct GB 36, Precinct GB 37, Precinct GB 38, Precinct GB 39: Tract 125.06: Block Group 1: Block 1065, Block 1067; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3007; Precinct GB 40A: Tract 160.02: Block Group 2: Block 2004, Block 2005; Precinct GB 40B, Precinct GB 42, Precinct GB 43, Precinct GB 44, Precinct GB 45, Precinct GB 47, Precinct GB 48, Precinct GB 49, Precinct GB 50, Precinct GB 51, Precinct GB 52: Tract 126.04: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3017; Precinct GB 54, Precinct GB 55, Precinct GB 56, Precinct GB 57, Precinct GB 58, Precinct GB 59, Precinct GB 60, Precinct GB 61, Precinct GB 62, Precinct GB 63, Precinct GB 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4067; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Precinct Monroe 1, Precinct Monroe 2.

District 28: Guilford County: Precinct Deep River South: Tract 162.02: Block Group 1: Block 1032, Block 1033, Block 1034, Block 1035, Block 1044, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1055, Block 1056, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1134, Block 1135, Block 1136, Block 1137, Block 1141, Block 1142, Block 1143, Block 1144, Block 1145, Block 1146; Precinct Fentress 1, Precinct Friendship 1, Precinct Friendship 2, Precinct GB 03, Precinct GB 04, Precinct GB 05, Precinct GB 06: Tract 127.05: Block Group 2: Block 2000, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Tract 127.06: Block Group 2: Block 2000, Block 2001, Block 2004, Block 2005, Block 2006, Block 2007, Block 2011, Block 2013; Tract 127.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Tract 128.03: Block Group 1: Block 1001, Block 1003, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1999; Tract 154: Block Group 6: Block 6008; Precinct GB 46, Precinct GB 52: Tract 113: Block Group 2: Block 2015, Block 2016, Block 2019, Block 2020, Block 2021; Tract 114: Block Group 5: Block

5006, Block 5007, Block 5008; Tract 126.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1011, Block 1012, Block 1013, Block 1026, Block 1027; Precinct GB 53, Precinct GB 64: Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct GB 65, Precinct GB 66, Precinct GB 67, Precinct GB 68, Precinct GB 69, Precinct GB 70, Precinct GB 71, Precinct GB 72, Precinct GB 73, Precinct GB 74, Precinct GB 75, Precinct HP, Precinct HP 01, Precinct HP 02, Precinct HP 03, Precinct HP 04, Precinct HP 05, Precinct HP 06, Precinct HP 07, Precinct HP 08, Precinct HP 09, Precinct HP 10, Precinct HP 11, Precinct HP 12, Precinct HP 17, Precinct HP 18, Precinct HP 19A, Precinct HP 19B, Precinct HP 20A, Precinct HP 20B, Precinct HP 26, Precinct HP 27, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3, Precinct Jamestown 4, Precinct Jamestown 5, Precinct Jefferson 1: Tract 127.06: Block Group 2: Block 2002, Block 2003; Tract 128.03: Block Group 1: Block 1000, Block 1002, Block 1004, Block 1011, Block 1017, Block 1033, Block 1034, Block 1080; Precinct Jefferson 2: Tract 111.02: Block Group 2: Block 2000; Tract 127.07: Block Group 1: Block 1000, Block 1001; Tract 128.03: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1042, Block 1049, Block 1051, Block 1055, Block 1066, Block 1067, Block 1069, Block 1070, Block 1074, Block 1075, Block 1076, Block 1077; Block Group 2: Block 2000, Block 2001, Block 2007, Block 2012, Block 2013, Block 2038; Tract 153: Block Group 3: Block 3036; Precinct Jefferson 3, Precinct Pleasant Garden 1, Precinct Pleasant Garden 2, Precinct Sumner 1, Precinct Sumner 2, Precinct Sumner 3, Precinct Sumner 4.

District 29: Montgomery County, Randolph County.

District 30: Alleghany County, Stokes County, Surry County, Yadkin County.

District 31: Forsyth County: Precinct 011, Precinct 012, Precinct 013: Tract 33.07: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1033, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1999; Tract 33.08: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1022, Block 1023, Block 1024, Block 1025, Block 1047; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2024, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2999; Precinct 014, Precinct 015, Precinct 021, Precinct 031, Precinct 032: Tract 28.05: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1025, Block 1026, Block 1027, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block

1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1100; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3052, Block 3053, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3064, Block 3065, Block 3066, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3995, Block 3996, Block 3997, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4017, Block 4018; Precinct 033: Tract 28.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Tract 29.01: Block Group 2: Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2029, Block 2030, Block 2031, Block 2033; Precinct 034, Precinct 043: Tract 33.03: Block Group 3: Block 3034, Block 3035, Block 3036, Block 3037; Tract 34.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2021, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2035; Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 091, Precinct 092, Precinct 101: Tract 28.01: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3061, Block 3062, Block 3063; Tract 28.04: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022; Block Group 3: Block 3025, Block 3026, Block 3027, Block 3028; Tract 28.05: Block Group 3: Block 3063; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4019; Precinct 111, Precinct 112, Precinct 123: Tract 39.04: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029; Precinct 131, Precinct 132, Precinct 133, Precinct 507: Tract 33.03: Block Group 2: Block 2000, Block 2057, Block 2058, Block 2059; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3028, Block 3029; Precinct 701, Precinct 702, Precinct 703, Precinct 704: Tract 10: Block Group 3: Block 3009; Tract 21: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 22: Block Group 4: Block 4014, Block 4015, Block 4018, Block 4019; Precinct 705: Tract 21: Block Group 2, Block Group 3: Block 3002, Block 3003; Tract 22: Block Group 5: Block 5026, Block 5027, Block 5033, Block 5034, Block 5035,

Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041; Precinct 706, Precinct 707: Tract 22: Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025; Tract 25.02: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2021, Block 2022, Block 2023, Block 2024, Block 2998, Block 2999; Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 807, Precinct 808: Tract 39.04: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2015, Block 2016; Tract 39.05: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Tract 39.06: Block Group 3: Block 3009, Block 3010, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018; Precinct 809, Precinct 901, Precinct 906, Precinct 907.

District 32: Forsyth County: Precinct 013: Tract 33.08: Block Group 2: Block 2023, Block 2025, Block 2026, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2998; Precinct 032: Tract 28.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Tract 28.06: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1031; Precinct 033: Tract 27.02: Block Group 1: Block 1000, Block 1001, Block 1012; Tract 28.05: Block Group 2: Block 2027, Block 2028; Tract 28.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038; Block Group 2; Precinct 042, Precinct 043: Tract 33.03: Block Group 3: Block 3032, Block 3033, Block 3038, Block 3039; Tract 34.01: Block Group 1: Block 1000, Block 1001, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1033, Block 1034, Block 1035, Block 1036, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1056, Block 1057, Block 1058; Block Group 2; Tract 34.02: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2022, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037; Precinct 081, Precinct 082, Precinct 083, Precinct 101: Tract 28.04: Block Group 1: Block 1016, Block 1017, Block 1999; Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3011, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3029, Block 3030; Precinct 122, Precinct 123: Tract 39.03: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 301, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506, Precinct 507: Tract 33.03: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2006, Block 2007, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2020, Block 2021, Block 2023, Block 2024, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040,

Block 2041, Block 2042, Block 2043, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2060, Block 2061, Block 2062, Block 2998; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3030, Block 3031, Block 3040, Block 3041; Tract 34.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1037, Block 1038, Block 1039, Block 1040, Block 1052, Block 1053, Block 1054, Block 1055; Precinct 601, Precinct 602, Precinct 603, Precinct 604, Precinct 605, Precinct 606, Precinct 607, Precinct 704: Tract 10: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3010, Block 3011; Precinct 705: Tract 38.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1997, Block 1998, Block 1999; Block Group 3: Block 3000; Tract 38.04: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct 707: Tract 38.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003; Precinct 708, Precinct 709, Precinct 808: Tract 39.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008; Precinct 902, Precinct 903, Precinct 904, Precinct 905, Precinct 908, Precinct 909.

District 33: Davidson County, Guilford County: Precinct Deep River South: Tract 162.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1075, Block 1076, Block 1079, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1108, Block 1115, Block 1118, Block 1119, Block 1138, Block 1139, Block 1140; Tract 163.01: Block Group 2: Block 2012; Precinct HP 13, Precinct HP 14, Precinct HP 15, Precinct HP 16, Precinct HP 21, Precinct HP 22, Precinct HP 23, Precinct HP 24, Precinct HP 25.

District 34: Davie County, Rowan County.

District 35: Mecklenburg County: Precinct 201, Precinct 216, Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 234, Precinct 235, Precinct 236; Union County.

District 36: Cabarrus County, Iredell County: Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4: Tract 613: Block Group 1: Block 1019, Block 1066, Block 1067, Block 1068, Block 1070; Tract 614: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5062, Block 5063, Block 5064, Block 5065, Block 5073, Block 5999; Block Group 8: Block 8029, Block 8030, Block 8031, Block 8032, Block 8033, Block 8034, Block 8035, Block 8038, Block 8039, Block 8044, Block 8045, Block 8046, Block 8047, Block 8048, Block 8049, Block 8050, Block 8051, Block 8052, Block 8053, Block 8054, Block 8055, Block 8056, Block 8057, Block 8061; Tract 616: Block Group 5: Block 5007, Block 5008, Block 5010, Block 5011, Block 5013, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5025, Block 5031; Block Group 6: Block 6010, Block 6011, Block 6012, Block 6013, Block

6014, Block 6016, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036.

District 37: Mecklenburg County: Precinct 001, Precinct 002, Precinct 004, Precinct 005, Precinct 006, Precinct 007, Precinct 008, Precinct 009, Precinct 010, Precinct 015, Precinct 017, Precinct 018, Precinct 020, Precinct 021, Precinct 029, Precinct 032, Precinct 033, Precinct 034, Precinct 035, Precinct 037, Precinct 038, Precinct 044, Precinct 045, Precinct 046, Precinct 047, Precinct 049, Precinct 050, Precinct 051, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 066, Precinct 083, Precinct 084, Precinct 094, Precinct 095, Precinct 099, Precinct 102, Precinct 108, Precinct 109, Precinct 115, Precinct 116, Precinct 117, Precinct 123, Precinct 124, Precinct 125, Precinct 130, Precinct 203, Precinct 205.

District 38: Mecklenburg County: Precinct 011, Precinct 012, Precinct 013, Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 027: Tract 52: Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4005, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4025, Block 4026, Block 4027, Block 4028, Block 4030, Block 4031, Block 4038; Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 056: Tract 51: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Tract 52: Block Group 3: Block 3004, Block 3005; Precinct 078, Precinct 079, Precinct 080, Precinct 081, Precinct 089, Precinct 098, Precinct 120, Precinct 122, Precinct 134, Precinct 138, Precinct 200, Precinct 209, Precinct 210, Precinct 211: Tract 61.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1011, Block 1062, Block 1063; Tract 61.02: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3030, Block 3040; Precinct 222, Precinct 223, Precinct 224, Precinct 225: Tract 58.06: Block Group 1: Block 1012, Block 1013, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1037, Block 1038, Block 1039; Precinct 228, Precinct 229, Precinct 230, Precinct 243, Precinct 77, Precinct 97.

District 39: Mecklenburg County: Precinct 019, Precinct 036, Precinct 048, Precinct 057, Precinct 058, Precinct 059, Precinct 065, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 085, Precinct 086, Precinct 087, Precinct 088, Precinct 090, Precinct 091, Precinct 092, Precinct 093, Precinct 096, Precinct 100, Precinct 101, Precinct 103, Precinct 106, Precinct 110, Precinct 111, Precinct 112, Precinct 113, Precinct 114, Precinct 118, Precinct 119, Precinct 121, Precinct 129, Precinct 131, Precinct 136, Precinct 137, Precinct 139, Precinct 140, Precinct 144, Precinct 215, Precinct 217, Precinct 225: Tract 58.06: Block Group 1: Block 1034, Block 1035, Block 1036, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1070, Block 1076, Block 1078, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092; Block Group 2; Tract 58.07: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014; Precinct 226, Precinct 227, Precinct 231, Precinct 232, Precinct 233.

District 40: Mecklenburg County: Precinct 003, Precinct 014, Precinct 026, Precinct 027: Tract 52: Block Group 1: Block 1000, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Tract 53.01: Block Group 1: Block 1000, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1015, Block 1016, Block 1017, Block 1019, Block 1020, Block 1021, Block 1022, Block 1036, Block 1037; Precinct 028, Precinct 030, Precinct 042, Precinct 043, Precinct 056: Tract 50: Block Group 2: Block 2000, Block 2001, Block 2005; Tract 51: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030; Tract 52: Block Group 1: Block 1001; Tract 53.01: Block Group 1: Block 1001, Block 1002, Block 1013, Block 1014, Block 1018; Precinct 060, Precinct 082, Precinct 104, Precinct 105, Precinct 107, Precinct 126, Precinct 127, Precinct 128, Precinct 132, Precinct 133, Precinct 135, Precinct 141, Precinct 142, Precinct 143, Precinct 145, Precinct 202, Precinct 204, Precinct 206, Precinct 207, Precinct 208, Precinct 211: Tract 55.03: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066; Tract 61.02: Block Group 3: Block 3000, Block 3001, Block 3005, Block 3006, Block 3007, Block 3026, Block 3027, Block 3028, Block 3029, Block 3031, Block 3032; Precinct 212, Precinct 213, Precinct 214, Precinct 237, Precinct 238, Precinct 239, Precinct 240, Precinct 241, Precinct 242.

District 41: Gaston County: Precinct Alexis, Precinct Lucia, Precinct Mt Holly 1, Precinct Mt Holly 2, Precinct Stanley 1, Precinct Stanley 2; Iredell County: Precinct Barringer, Precinct Bethany, Precinct Chambersburg, Precinct Coddle Creek 4: Tract 612: Block Group 9: Block 9031, Block 9032, Block 9033, Block 9034, Block 9035, Block 9036, Block 9051, Block 9053; Tract 613: Block Group 1: Block 1017, Block 1018, Block 1051, Block 1052, Block 1055, Block 1056, Block 1057, Block 1058, Block 1061, Block 1063, Block 1064, Block 1065, Block 1078; Tract 614: Block Group 3: Block 3001; Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5014, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5025, Block 5026, Block 5030, Block 5032, Block 5033, Block 5042, Block 5046, Block 5047, Block 5048, Block 5059, Block 5060, Block 5061, Block 5066, Block 5067, Block 5068, Block 5069, Block 5070, Block 5072, Block 5076, Block 5077, Block 5078, Block 5081, Block 5082, Block 5083, Block 5998; Precinct Cool Springs, Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6; Lincoln County.

District 42: Catawba County, Iredell County: Precinct Concord, Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Shiloh, Precinct Turnersburg, Precinct Union Grove.

District 43: Gaston County: Precinct Armstrong, Precinct Ashbrook, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Catawba Heights, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3, Precinct Cramerton, Precinct Crowders Mountain, Precinct Dallas 1, Precinct Dallas 2, Precinct Flint Grove, Precinct Forest Heights, Precinct Gardner Park, Precinct Gaston Day, Precinct Grier, Precinct Health Center, Precinct High Shoals, Precinct Highland, Precinct Landers Chapel, Precinct Lowell, Precinct Mcadenville, Precinct Myrtle, Precinct New Hope, Precinct Pleasant Ridge, Precinct Ranlo, Precinct Robinson 1, Precinct Robinson 2, Precinct Sherwood, Precinct South Gastonia,

Precinct Southpoint, Precinct Tryon, Precinct Union, Precinct Victory, Precinct Wood Hill, Precinct York Chester.

District 44: Burke County, Caldwell County.

District 45: Alexander County, Ashe County, Watauga County, Wilkes County.

District 46: Cleveland County, Rutherford County.

District 47: Avery County, Haywood County: Precinct Allens Creek, Precinct Beaverdam 1, Precinct Beaverdam 2, Precinct Beaverdam 3, Precinct Beaverdam 4, Precinct Beaverdam 5/6, Precinct Beaverdam 7, Precinct Big Creek, Precinct Clyde North, Precinct Clyde South, Precinct Crabtree, Precinct Fines Creek 1, Precinct Fines Creek 2, Precinct Hazelwood, Precinct Iron Duff, Precinct Ivy Hill, Precinct Jonathan Creek, Precinct Lake Junaluska, Precinct Saunook, Precinct Waynesville Center, Precinct Waynesville East, Precinct Waynesville South 1, Precinct Waynesville South 2, Precinct Waynesville West, Precinct White Oak; Madison County, McDowell County, Mitchell County, Yancey County.

District 48: Buncombe County: Precinct Asheville 18, Precinct Asheville 19, Precinct Asheville 24: Tract 12: Block Group 5: Block 5001, Block 5002, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5029, Block 5030, Block 5033, Block 5034, Block 5992, Block 5993, Block 5994, Block 5995; Tract 23.02: Block Group 3: Block 3014, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3028, Block 3029, Block 3030, Block 3031, Block 3043, Block 3044, Block 3045, Block 3046, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3060, Block 3062, Block 3992, Block 3993, Block 3994; Precinct Asheville 29, Precinct Averys Creek, Precinct Biltmore, Precinct Broad River, Precinct Fairview 1, Precinct Fairview 2, Precinct Limestone 1, Precinct Limestone 2, Precinct Limestone 3, Precinct Limestone 4, Precinct Lower Hominy 1, Precinct Lower Hominy 3, Precinct Upper Hominy 1 & 3; Henderson County, Polk County.

District 49: Buncombe County: Precinct Asheville 01, Precinct Asheville 02, Precinct Asheville 03, Precinct Asheville 04, Precinct Asheville 05, Precinct Asheville 06, Precinct Asheville 07, Precinct Asheville 08, Precinct Asheville 09, Precinct Asheville 10, Precinct Asheville 11, Precinct Asheville 12, Precinct Asheville 13, Precinct Asheville 14, Precinct Asheville 15, Precinct Asheville 16, Precinct Asheville 17, Precinct Asheville 20, Precinct Asheville 21, Precinct Asheville 22, Precinct Asheville 23, Precinct Asheville 24: Tract 12: Block Group 5: Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5026, Block 5027, Block 5028; Tract 13: Block Group 2: Block 2015, Block 2016, Block 2018, Block 2023, Block 2024, Block 2025, Block 2027; Tract 23.02: Block Group 3: Block 3064, Block 3987; Tract 25.02: Block Group 4: Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030; Block Group 6: Block 6000, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6024, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030; Precinct Asheville 25, Precinct Asheville 26, Precinct Asheville 27, Precinct Asheville 28, Precinct Black Mountain 1, Precinct Black Mountain 2, Precinct Black Mountain 3, Precinct Black Mountain 4, Precinct Black Mountain 5, Precinct Flat Creek, Precinct French Broad, Precinct Hazel 1, Precinct Hazel 2, Precinct Ivy 1 & 2, Precinct Leicester 1, Precinct Leicester 2 & Sandy Mush, Precinct Lower Hominy 2, Precinct North Buncombe, Precinct Reems Creek, Precinct Reynolds, Precinct Riceville 1 & Swannanoa 2, Precinct Riceville 2 & Swannanoa 3, Precinct Swannanoa 1, Precinct Upper Hominy 2, Precinct Weaverville, Precinct West Buncombe 1, Precinct West Buncombe 2, Precinct Woodfin, Precinct Woodland Hills.

District 50: Cherokee County, Clay County, Graham County, Haywood County: Precinct Cecil, Precinct East Fork, Precinct Pigeon, Precinct Pigeon Center; Jackson County, Macon County, Swain County, Transylvania County.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of October 20, 2003, to reflect precincts updated as outlined in subsection (c) of this section. However, the boundary corner between Forsyth, Stokes, and Rockingham Counties is as established by Chapter 23, Public Laws of 1848-49.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect with greater accuracy the precincts as they existed as of October 20, 2003, including changes made to precincts after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in several counties. Those changes include actions by county boards of elections to divide, merge, and otherwise realign precincts. Where a realignment of precinct boundaries by a county board of elections is impossible to reflect in the database using Census geography, the Legislative Services Office modified the database by either merging two precincts or by approximating the boundary using Census geography. The following is a list, for informational purposes only, of precincts shown in the TIGER Files, the geography of which has been modified in the Legislative Services Office computer database:

(1) Anson County: All precincts except Burnsville, Peachland, and White Store.
(2) Buncombe County: Asheville 4, 15, 22, 19, Riceville Swannanoa 2 CRU, and Black Mountain 3.
(3) Cabarrus County: 0202 and 1209.
(4) Caldwell County: Lovelady 2.
(5) Carteret County: Cape Carteret, Cedar Point, Indian Beach, Salter Path, Newport 1, and Newport 2.
(6) Caswell County: Yanceyville 2 and Yanceyville 4.
(7) Chatham County: East Williams, North Williams, and West Williams.
(8) Craven County: Havelock.
(9) Cumberland County: Beaver Dam, Cedar Creek, Arran Hills, Cumberland 1, Hope Mills 1, and Stoney Point.
(10) Dare County: Manteo.
(11) Gates County: 1 and 5.
(12) Guilford County: Greensboro 40, North Clay, High Point 19, High Point 20, Center Grove 1, and Summerfield 3.
(13) Hertford County: Murfreesboro 2 and Murfreesboro 3.
(14) Iredell County: Coddle Creek 1 through 4 and Statesville 1 through 6.
(15) Johnston County: East Clayton, Pleasant Grove, and Wilders.
(16) Lee County: West Sanford 2.
(17) Lincoln County: North Brook I/II, Iron Station, Lowesville, Denver, Hickory Grove, Pumpkin Center, and Triangle.
(18) Mecklenburg County: 77, 97, 121, 122, 138, 140, 142, 143, 144, 202, 206, 225, 228, 239, 240, and 242.
(19) Moore County: Eureka and Knollwood.
(20) New Hanover County: Harnett 2 and 8.
(21) Onslow County: Voting Districts Not Defined.
(22) Orange County: Booker Creek, Cedar Falls, Dogwood Acres, and Frank Porter Graham.
(23) Pasquotank County: Precincts Mt. Hermon, Providence, 1A, 1B, 2A, 2B, 3A, 3B, and 4A.

(24) Robeson County: Fairmont 1 and 2 and Red Springs 1 and 2.
(25) Rowan County: Bostian Crossroads, Enochville, Franklin, and Granite Quarry.
(26) Union County: 22 and 33.
(27) Wake County: 01-22, 01-32, 01-43, 04-09, 04-11, 05-00, 07-02, 07-05, 07-06, 08-01, 08-03, 08-04, 09-02, 10-01, 10-02, 12-01, 12-02, 12-04, 13-02, 13-03, 15-01, 15-02, 16-01, 16-04, 17-01, 17-02, 17-05, 17-07, 18-02, 18-03, 19-02, 19-03, 19-04, 20-01, 20-03, 20-04, and 20-06.

The database is available for public inspection, and where it differs from the foregoing list, the database prevails.

In additional instances, precincts shown in the TIGER Files have not been changed geographically, but the names that appear in TIGER have been modified to correct misspellings, to standardize naming, or to reflect more closely the names used by county boards of elections and the State Board of Elections.

(d) If any precinct boundary is changed, that change shall not change the boundary of a senatorial district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.
(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.
(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C.S., s. 6087; 1921, c. 161; 1941, c. 225; 1963, Ex. Sess., c. 1; 1966, Ex. Sess., c. 1, s. 1; 1971, c. 1177; 1981, c. 821; 1982, Ex. Sess., c. 5; 1982, 2nd Ex. Sess., c. 2; 1984, Ex. Sess., c. 4, ss. 1-3; c. 5, ss. 1-4; 1991, c. 676, s. 1; 1991, Ex. Sess., c. 4, ss. 1, 2; 2001-458, ss. 1, 2; 2001-487, s. 121.5; 2002-1, Ex. Sess., s. 3.1; 2003-434, 1st Ex. Sess., ss. 3, 4.)

Editor's Note. —

The bracketed language in subsection (a) was probably inadvertently omitted when this section was amended, and has been re-inserted in brackets at the direction of the Revisor of Statutes.

Session Laws 2003-434, 1st Ex. Sess., s. 5.(a), provides: "If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(b), provides: "If the filing period or primary election or both for all offices are postponed under this section, the State Board of Elections may issue temporary orders pursuant to that postponement that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2004 primaries and general election for those offices. Those orders shall include a primary schedule and if necessary an altered schedule leading to the general election on November 2, 2004. The orders shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its orders, including a Revised Primary Timetable, to county boards of elections. Adoption of orders under this subsection is not subject to Chapter 150B of the General Statutes."

Session Laws 2003-434, s. 1st Ex. Sess., 5.(c), provides: "The State Board of Elections shall be governed by the following limitations:

"(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one

candidate filing period for all those offices and one primary election for all those offices. The postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

"(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

"(3) The State Board shall set a filing period no shorter than 10 business days.

"(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(d), provides: "If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office at the next meeting of the board of education after the certification of the election."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(f), provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, s. 15, contains a severability clause.

Effect of Amendments. —

Session Laws 2003-434, 1st Ex. Sess., ss. 3 and 4, effective November 25, 2003, rewrote subsections (a), (b), and (c).

§ 120-2. House apportionment specified.

(a) [**See Editor's note.** For the purpose of nominating and electing members of the North Carolina House of Representatives in 2004 and periodically thereafter; the State of North Carolina shall be divided into the following districts with each district electing one Representative:]

District 1: Camden County, Currituck County, Pasquotank County, Tyrrell County.

District 2: Chowan County, Dare County, Hyde County, Washington County.

District 3: Craven County: Precinct Brices Creek: Tract 9610: Block Group 5: Block 5016, Block 5017, Block 5997, Block 5998, Block 5999; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6024, Block 6993, Block 6994, Block 6995, Block 6996, Block 6998, Block 6999; Precinct Bridgeton, Precinct Clarks: Tract 9603: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1998, Block 1999; Tract 9605: Block Group 3: Block 3021, Block 3022, Block 3023, Block 3995; Precinct Croatan: Tract 9611: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1037, Block 1038, Block 1039, Block 1040, Block 1997, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002; Precinct Epworth, Precinct Ernul, Precinct Fairfield Harbour, Precinct Fort Barnwell, Precinct Fort Totten: Tract 9604: Block Group 1: Block 1049; Tract 9607: Block Group 2: Block 2002, Block 2009, Block 2010, Block 2011, Block 2012, Block 2015, Block 2016, Block 2020; Precinct George Street: Tract 9604: Block Group 1: Block 1041, Block 1042, Block 1043, Block 1051, Block 1052, Block 1053, Block 1054, Block 1062, Block 1998; Tract 9609: Block Group 1: Block 1000, Block 1001, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1996, Block 1997, Block 1998, Block 1999; Precinct Glenburnie Park: Tract 9605: Block Group 3: Block 3000, Block 3001, Block 3997, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019,

Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4033, Block 4034, Block 4998, Block 4999; Tract 9606: Block Group 3: Block 3000; Tract 9608: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001; Precinct Grantham: Tract 9610: Block Group 1: Block 1032, Block 1033, Block 1034, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2003, Block 2023, Block 2028, Block 2029, Block 2030, Block 2999; Block Group 3, Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7003, Block 7004, Block 7005, Block 7006, Block 7009, Block 7010, Block 7011; Tract 9611: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1998; Precinct Grover C. Fields: Tract 9605: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4032; Tract 9606: Block Group 2: Block 2000, Block 2005, Block 2006; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3015, Block 3016, Block 3017, Block 3018, Block 3026, Block 3039, Block 3040, Block 3041; Block Group 4: Block 4027, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4035, Block 4036, Block 4037; Tract 9607: Block Group 1: Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2023, Block 2024; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Precinct H.J. Macdonald: Tract 9606: Block Group 1: Block 1008, Block 1009, Block 1010; Precinct Havelock East: Tract 9613: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2031, Block 2032; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016; Block Group 4: Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4027; Block Group 5: Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5053, Block 5054, Block 5056, Block 5057; Precinct Havelock West: Tract 9611: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1996; Block Group 2: Block 2029, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006,

Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3998; Tract 9612: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1996, Block 1997; Tract 9613: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1022, Block 1026, Block 1027, Block 1028, Block 1999; Precinct Jasper: Tract 9603: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1996; Precinct New Bern West: Tract 9604: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008; Block Group 5: Block 5000, Block 5001, Block 5017, Block 5018, Block 5019, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6012, Block 6013, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6995, Block 6999; Tract 9606: Block Group 1: Block 1007; Block Group 2: Block 2001, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Tract 9607: Block Group 3: Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014; Precinct Rhems: Tract 9604: Block Group 5: Block 5070; Block Group 7: Block 7000, Block 7001; Precinct River Bend: Tract 9604: Block Group 5: Block 5073, Block 5074; Block Group 7: Block 7004, Block 7005, Block 7006, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7019, Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038, Block 7039, Block 7040, Block 7041, Block 7042, Block 7043, Block 7044, Block 7045, Block 7046, Block 7047, Block 7994, Block 7995, Block 7996, Block 7997; Precinct Trent Woods: Tract 9604: Block Group 1: Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1996, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3998, Block 3999; Block Group 6: Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6024, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6996, Block 6998; Precinct Truitt, Precinct Vanceboro; Pamlico County.

District 4: Duplin County, Onslow County: Precinct Catherine Lake, Precinct Gum Branch, Precinct Richlands, Precinct Tar Landing.

District 5: Bertie County, Gates County, Hertford County, Perquimans County.

District 6: Beaufort County, Pitt County: Precinct Greenville 08A, Precinct Greenville 08B, Precinct Greenville 09: Tract 3: Block Group 1, Block Group 2:

Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2015, Block 2016; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4999; Tract 9: Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2055, Block 2056, Block 2057, Block 2059, Block 2993, Block 2994, Block 2995, Block 2996; Tract 10: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4997; Precinct Greenville 10B, Precinct Grimesland, Precinct Pactolus, Precinct Simpson A, Precinct Simpson B.

District 7: Halifax County: Precinct Butterwood: Tract 9906: Block Group 2: Block 2018, Block 2019, Block 2021, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060; Tract 9907: Block Group 4: Block 4030, Block 4031; Tract 9908: Block Group 1: Block 1000, Block 1029; Precinct Conoconnara, Precinct Enfield 1, Precinct Enfield 2, Precinct Enfield 3, Precinct Faucett, Precinct Halifax, Precinct Hobgood, Precinct Hollister: Tract 9906: Block Group 3: Block 3011, Block 3012, Block 3013, Block 3019, Block 3020, Block 3021; Tract 9908: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1036, Block 1037, Block 1038, Block 1039; Block Group 2: Block 2011; Block Group 3: Block 3000; Block Group 4: Block 4000, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4020; Precinct Littleton 1: Tract 9906: Block Group 2: Block 2020; Tract 9907: Block Group 2: Block 2013; Block Group 4: Block 4000, Block 4001, Block 4003, Block 4004, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4029; Precinct Palmyra, Precinct Ringwood, Precinct Roanoke Rapids 07, Precinct Roanoke Rapids 08, Precinct Roanoke Rapids 09, Precinct Roanoke Rapids 10, Precinct Roanoke Rapids 11: Tract 9905: Block Group 1: Block 1040, Block 1041, Block 1042, Block 1043, Block 1045, Block 1046; Block Group 2: Block 2004, Block 2005, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Precinct Roseneath, Precinct Scotland Neck 1, Precinct Scotland Neck 2, Precinct Weldon 1, Precinct Weldon 2, Precinct Weldon 3; Nash County: Precinct Rocky Mount 01, Precinct Rocky Mount 02, Precinct Rocky Mount 03, Precinct Rocky Mount 04: Tract 102: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3001, Block 3002, Block 3004, Block 3005, Block 3006, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Tract 103: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018; Precinct Rocky Mount 10, Precinct Whitakers North 1, Precinct Whitakers South.

District 8: Martin County, Pitt County: Precinct Arthur: Tract 17: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1068, Block 1069, Block 1075, Block 1076, Block 1077; Tract 18: Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004; Precinct Belvoir, Precinct Bethel, Precinct Carolina, Precinct Falkland, Precinct Farmville A, Precinct Farmville B, Precinct Fountain, Precinct Greenville 01, Precinct Greenville 03, Precinct Greenville 04: Tract 6: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3011, Block 3012, Block 3013, Block 3014, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3999;

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District 9: Pitt County: Precinct Arthur: Tract 6: Block Group 2: Block 2018, Block 2021; Tract 16: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1020; Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2049, Block 2050, Block 2054; Block Group 3: Block 3005, Block 3006; Tract 17: Block Group 1: Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1066, Block 1067, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074; Tract 18: Block Group 4: Block 4000; Precinct Ayden A, Precinct Ayden B, Precinct Chicod, Precinct Greenville 04: Tract 6: Block Group 3: Block 3015, Block 3032, Block 3036, Block 3037, Block 3038; Block Group 4: Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4065, Block 4066; Tract 16: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Tract 17: Block Group 1: Block 1043,

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District 10: Greene County, Lenoir County: Precinct Contentnea, Precinct Falling Creek: Tract 107: Block Group 3: Block 3021, Block 3022, Block 3023, Block 3024, Block 3998; Tract 110: Block Group 1: Block 1029, Block 1030; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2018, Block 2019, Block 2020; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3005, Block 3999; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4999; Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6043, Block 6044, Block 6045, Block 6046, Block 6047, Block 6995, Block 6996, Block 6997, Block 6998, Block 6999; Tract 113: Block Group

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District 11: Wayne County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 05, Precinct 06, Precinct 07, Precinct 08, Precinct 09, Precinct 10: Tract 12: Block Group 1: Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1030, Block 1031, Block 1032; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Precinct 11: Tract 12: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1019, Block 1020, Block 1033, Block 1034, Block 1035, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070; Tract 19: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1019, Block 1020, Block 1021, Block 1047, Block 1049, Block 1050; Block Group 2: Block 2001; Precinct 12, Precinct 13, Precinct 14: Tract 3.02: Block Group 2: Block 2031, Block 2032, Block 2033, Block 2034; Tract 4: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1091, Block 1092; Block Group 3: Block 3008, Block 3009; Block Group 4: Block 4003, Block 4007; Precinct 15: Tract 3.02: Block Group 2: Block 2012, Block 2013; Precinct 16, Precinct 21: Tract 5: Block Group 1: Block 1001; Tract 13:

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District 12: Craven County: Precinct Brices Creek: Tract 9610: Block Group 6: Block 6011, Block 6022, Block 6023, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6037, Block 6038, Block 6997; Precinct Clarks: Tract 9604: Block Group 5: Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5062; Tract 9605: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1028, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 3: Block 3016, Block 3017, Block 3025, Block 3026, Block 3994, Block 3996; Precinct Cove City, Precinct Croatan: Tract 9610: Block Group 7: Block 7007, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7025, Block 7026, Block 7027, Block 7028, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7035, Block 7036, Block 7037, Block 7038, Block 7039, Block 7999; Tract 9611: Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2016, Block 2017, Block 2018, Block 2019, Block 2030, Block 2031; Precinct Dover, Precinct Fort Totten: Tract 9604: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1050; Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012; Tract 9606: Block Group 4: Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4038, Block 4039, Block 4040; Tract 9607: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005; Block Group 2: Block 2000, Block 2001, Block 2013, Block 2014, Block 2017, Block 2018, Block 2019, Block 2021, Block 2022, Block 2025; Tract 9608: Block Group 3: Block 3032, Block 3044, Block 3045, Block 3046, Block 3047, Block 3049, Block 3050; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020; Block Group 5; Tract 9609: Block Group 3: Block 3007, Block 3008; Precinct George Street: Tract 9604: Block Group 1: Block 1000, Block 1001, Block 1027, Block 1040, Block 1995, Block 1999; Tract 9607: Block Group 1: Block 1000; Tract 9608: Block Group 3: Block 3023, Block 3024, Block 3025, Block 3026, Block 3051; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Block Group 6: Block 6000, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016; Tract 9609: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006,

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Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4020, Block 4021, Block 4022, Block 4025, Block 4026, Block 4028, Block 4029; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5055, Block 5058, Block 5059, Block 5060, Block 5061, Block 5062, Block 5063; Precinct Havelock West: Tract 9611: Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2032, Block 2033, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2997, Block 2998, Block 2999; Block Group 3: Block 3017, Block 3018, Block 3999; Tract 9612: Block Group 1: Block 1000, Block 1001, Block 1012, Block 1013, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1032, Block 1033, Block 1992, Block 1993, Block 1995, Block 1998, Block 1999; Tract 9613: Block Group 1: Block 1021, Block 1023, Block 1024, Block 1025; Block Group 4: Block 4001, Block 4023, Block 4024; Block Group 5: Block 5015, Block 5016, Block 5017; Block Group 6: Block 6047, Block 6048, Block 6049, Block 6050; Precinct Jasper: Tract 9603: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055; Block Group 3: Block 3000, Block 3037; Block Group 4: Block 4053; Precinct New Bern West: Tract 9604: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5011, Block 5013, Block 5014, Block 5015, Block 5016, Block 5020, Block 5021, Block 5022, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039; Tract 9606: Block Group 2: Block 2002, Block 2003; Precinct Rhems: Tract 9604: Block Group 5: Block 5010, Block 5012, Block 5051, Block 5052, Block 5053, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068, Block 5069, Block 5071, Block 5072, Block 5075, Block 5076; Block Group 6: Block 6014, Block 6015, Block 6021, Block 6022,Block 6023; Block Group 7: Block 7002, Block 7048, Block 7049, Block 7051, Block 7052, Block 7053, Block 7054, Block 7992, Block 7999; Precinct River Bend: Tract 9604: Block Group 7: Block 7003, Block 7017, Block 7018, Block 7050, Block 7993, Block 7998; Precinct Trent Woods: Tract 9604: Block Group 6: Block 6036, Block 6997; Lenoir County: Precinct Falling Creek: Tract 110: Block Group 2: Block 2017; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004; Block Group 5: Block 5000, Block 5001; Precinct Kinston 1, Precinct Kinston 2,

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District 13: Carteret County, Jones County.

District 14: Onslow County: Precinct Bear Creek, Precinct Brynn Marr, Precinct Half Moon, Precinct Hubert, Precinct Mills, Precinct Mortons, Precinct New River, Precinct Northeast, Precinct Northwoods East, Precinct precincts not defined 1, Precinct Swansboro.

District 15: Onslow County: Precinct Cross Roads, Precinct Folkstone, Precinct Haws Run, Precinct Holly Ridge, Precinct Jacksonville, Precinct Nine Mile, Precinct Northwoods West, Precinct precincts not defined 2, Precinct Sneads Ferry, Precinct Verona.

District 16: New Hanover County: Precinct Cape Fear 2: Tract 116.04: Block Group 1: Block 1000, Block 1001, Block 1004, Block 1005, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Precinct Cape Fear 3: Tract 116.03: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2017, Block 2018, Block 2019, Block 2020; Block Group 3: Block 3010; Block Group 4; Tract 116.04: Block Group 2: Block 2006, Block 2007, Block 2026, Block 2027, Block 2031, Block 2034, Block 2035; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct Harnett 1, Precinct Harnett 2 & 8, Precinct Harnett 4, Precinct Harnett 5, Precinct Harnett 6, Precinct Harnett 7: Tract 116.04: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028, Block 2029, Block 2030, Block 2032, Block 2033, Block 2036, Block 2037; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3007, Block 3008, Block 3009, Block 3010, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065; Precinct Harnett 9, Precinct Wilmington 12: Tract 104: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1019, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2: Block 2000, Block 2012; Precinct Wilmington 13: Tract 105.01: Block Group 2: Block 2005; Tract 105.02: Block Group 4: Block 4000, Block 4008, Block 4009; Precinct Wilmington 18, Precinct Wilmington 22, Precinct Wilmington 23, Precinct Wilmington 24; Pender County: Precinct Burgaw South: Tract 9804: Block Group 1: Block 1000; Block Group 2: Block 2000, Block 2024, Block 2025, Block 2026, Block 2027, Block 2029, Block 2998, Block 2999; Precinct Rocky Point: Tract 9802: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2048, Block 2995, Block 2996, Block 2997, Block 2998, Block 2999; Tract 9804: Block Group 2: Block 2016, Block 2017, Block 2018; Block Group 5: Block 5070, Block 5071, Block 5072, Block 5075, Block 5076, Block 5077; Tract 9806: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block

1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052; Precinct Scotts Hill, Precinct Surf City, Precinct Topsail Lower, Precinct Topsail Upper.

District 17: Brunswick County: Precinct Belville, Precinct Boiling Spring Lakes, Precinct Bolivia, Precinct Frying Pan, Precinct Grissettown, Precinct Hood Creek, Precinct Leland, Precinct Longwood Tract 205.01: Block Group 2: Block 2011, Block 2084, Block 2085; Tract 206: Block Group 2: Block 2332, Block 2350, Block 2351, Block 2352, Block 2353; Precinct Mosquito, Precinct Oak Island 1, Precinct Oak Island 2, Precinct Oak Island 3, Precinct Secession 1, Precinct Secession 2, Precinct Shallotte: Tract 204.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, lock 3040, Block 3041, Block 3042, Block 3043, Block 3051, Block 3075, Block 3076, Block 3997, Block 3998; Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5062, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068, Block 5069, Block 5072, Block 5073, Block 5074, Block 5075, Block 5076, Block 5077, Block 5998, Block 5999; Tract 206: Block Group 2: Block 2277, Block 2278, Block 2279, Block 2281, Block 2282, Block 2283, Block 2284, Block 2285, Block 2286, Block 2287, Block 2288, Block 2291, Block 2292, Block 2293, Block 2294, Block 2295, Block 2296, Block 2297, Block 2298, Block 2300, Block 2301, Block 2302, Block 2310, Block 2311, Block 2312, Block 2313, Block 2314, Block 2315, Block 2316, Block 2317, Block 2318, Block 2319, Block 2320, Block 2321, Block 2322, Block 2323, Block 2324, Block 2325, Block 2326, Block 2327, Block 2328, Block 2329, Block 2330, Block 2331, Block 2334, Block 2335, Block 2336, Block 2337, Block 2338, Block 2339, Block 2340, Block 2341, Block 2342, Block 2343, Block 2344, Block 2345, Block 2346, Block 2347, Block 2348, Block 2349; Precinct Shingletree 1, Precinct Shingletree 2, Precinct Southport 1, Precinct Southport 2, Precinct Supply: Tract 204.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025; Block Group 4; Precinct Towncreek, Precinct Woodburn.

District 18: New Hanover County: Precinct Cape Fear 1, Precinct Cape Fear 2: Tract 115 Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042,

Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1059, Block 1992, Block 1993, Block 1994, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002; Block Group 5: Block 5984, Block 5985; Tract 116.03: Block Group 1, Block Group 2: Block 2000, Block 2001; Tract 116.04: Block Group 1: Block 1002, Block 1003; Precinct Cape Fear 3: Tract 103: Block Group 2: Block 2002; Tract 114: Block Group 1: Block 1000; Tract 116.03: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2021; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025; Tract 116.04: Block Group 3: Block 3027, Block 3028; Precinct Harnett 7: Tract 116.04: Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Precinct Wilmington 01, Precinct Wilmington 02, Precinct Wilmington 03, Precinct Wilmington 06, Precinct Wilmington 07, Precinct Wilmington 08, Precinct Wilmington 09, Precinct Wilmington 10, Precinct Wilmington 12: Tract 104: Block Group 1: Block 1000; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Precinct Wilmington 13: Tract 105.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Precinct Wilmington 15; Pender County: Precinct Burgaw North, Precinct Burgaw South: Tract 9804: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1017, Block 1018, Block 1020; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2028; Block Group 3: Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068; Block Group 4: Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5073, Block 5074; Tract 9806: Block Group 3: Block 3009; Precinct Canetuck, Precinct Caswell, Precinct Columbia, Precinct Grady, Precinct Holly Middle, Precinct Holly Upper, Precinct Long Creek, Precinct Penderlea, Precinct Rocky Point: Tract 9806: Block Group 1: Block 1996, Block 1997; Block Group 2: Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block

2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2999; Block Group 3: Block 3030, Block 3032, Block 3033; Precinct Union Lower, Precinct Union Upper.

District 19: New Hanover County: Precinct Federal Point 1, Precinct Federal Point 2, Precinct Federal Point 3, Precinct Federal Point 4, Precinct Federal Point 5, Precinct Harnett 3, Precinct Masonboro 2, Precinct Masonboro 3, Precinct Masonboro 4, Precinct Masonboro 5, Precinct Wilmington 04, Precinct Wilmington 05, Precinct Wilmington 11, Precinct Wilmington 14, Precinct Wilmington 16, Precinct Wilmington 17, Precinct Wilmington 19, Precinct Wilmington 20, Precinct Wilmington 21, Precinct Wrightsville Beach.

District 20: Brunswick County: Precinct Longwood: Tract 205.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1998; Block Group 2: Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2075, Block 2086, Block 2087, Block 2998; Tract 205.02: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2017, Block 2018; Tract 206: Block Group 2: Block 2245, Block 2246, Block 2247, Block 2248, Block 2333; Precinct Shallotte: Tract 204.01: Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5017, Block 5023, Block 5024, Block 5025, Block 5070, Block 5071; Tract 206: Block Group 2: Block 2090, Block 2091, Block 2092, Block 2128, Block 2133, Block 2134, Block 2135, Block 2136, Block 2137, Block 2138, Block 2139, Block 2140, Block 2141, Block 2142, Block 2143, Block 2144, Block 2145, Block 2146, Block 2147, Block 2148, Block 2149, Block 2150, Block 2151, Block 2152, Block 2153, Block 2154, Block 2155, Block 2156, Block 2157, Block 2165, Block 2166, Block 2167, Block 2168, Block 2169, Block 2170, Block 2171, Block 2172, Block 2173, Block 2174, Block 2175, Block 2176, Block 2177, Block 2178, Block 2179, Block 2180, Block 2181, Block 2182, Block 2183, Block 2184, Block 2185, Block 2186, Block 2187, Block 2188, Block 2189, Block 2190, Block 2196, Block 2197, Block 2198, Block 2199, Block 2200, Block 2201, Block 2202, Block 2203, Block 2204, Block 2205, Block 2206, Block 2207, Block 2208, Block 2209, Block 2210, Block 2211, Block 2212, Block 2213, Block 2214, Block 2215, Block 2216, Block 2217, Block 2218, Block 2219, Block 2220, Block 2221, Block 2222, Block 2223, Block 2224, Block 2225, Block 2226, Block 2227, Block 2228, Block 2229, Block 2230, Block 2231, Block 2232, Block 2233, Block 2237, Block 2238, Block 2249, Block 2250, Block 2251, Block 2252, Block 2253, Block 2254, Block 2255, Block 2258, Block 2259, Block 2260, Block 2261, Block 2275, Block 2276, Block 2280, Block 2289, Block 2290, Block 2299, Block 2303, Block 2304, Block 2305, Block 2306, Block 2307, Block 2308, Block 2309, Block 2354, Block 2355, Block 2356, Block 2357, Block 2358, Block 2359, Block 2362, Block 2363; Precinct Supply: Tract 204.01: Block Group 5: Block 5000, Block 5001,

Block 5002; Tract 206: Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2028, Block 2093, Block 2094, Block 2095, Block 2097, Block 2098, Block 2099, Block 2100, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111, Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2129, Block 2130, Block 2131, Block 2132, Block 2256, Block 2257, Block 2262, Block 2263, Block 2264, Block 2265, Block 2266, Block 2267, Block 2268, Block 2269, Block 2270, Block 2271, Block 2272, Block 2273, Block 2274, Block 2360, Block 2361, Block 2364; Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3088, Block 3089, Block 3090; Block Group 4: Block 4044, Block 4047, Block 4048, Block 4052, Block 4053, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4085, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4104, Block 4105, Block 4106, Block 4107, Block 4108, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4143, Block 4144, Block 4145, Block 4146, Block 4147, Block 4148, Block 4149, Block 4150, Block 4151, Block 4152, Block 4153, Block 4154, Block 4155, Block 4156, Block 4157, Block 4158, Block 4159, Block 4160, Block 4161, Block 4162, Block 4163, Block 4164, Block 4165, Block 4166, Block 4167, Block 4168, Block 4169, Block 4170, Block 4171, Block 4172, Block 4173, Block 4174, Block 4175, Block 4176, Block 4177, Block 4178, Block 4179, Block 4180, Block 4181, Block 4182, Block 4183, Block 4184, Block 4185, Block 4186, Block 4187, Block 4188, Block 4189; Precinct Waccamaw; Columbus County.

District 21: Sampson County: Precinct Clinton Central, Precinct Clinton East, Precinct Clinton Northeast, Precinct Clinton Southwest, Precinct Clinton West, Precinct Garland, Precinct Giddensville, Precinct Harrells, Precinct Ingold, Precinct Keener, Precinct Kitty Fork: Tract 9702: Block Group 4: Block 4027, Block 4028, Block 4036, Block 4037, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051; Tract 9705: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1007, Block 1015, Block 1016, Block 1017, Block 1022, Block 1023; Tract 9706: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003; Precinct Lakewood, Precinct Newton Grove: Tract 9701: Block Group 4: Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4019, Block 4020, Block 4024, Block 4025; Tract 9702: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1036, Block 1037, Block 1038, Block 1039; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block

2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2069, Block 2070, Block 2071, Block 2999; Precinct Roseboro: Tract 9704: Block Group 1: Block 1023, Block 1024, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042; Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2034, Block 2039, Block 2042, Block 2050, Block 2051, Block 2052; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Precinct Rowan, Precinct Salemburg: Tract 9705: Block Group 1: Block 1014, Block 1033, Block 1034, Block 1035, Block 1036, Block 1998, Block 1999; Block Group 2: Block 2026, Block 2027, Block 2029; Precinct Turkey; Wayne County: Precinct 10: Tract 12: Block Group 1: Block 1028, Block 1029, Block 1039, Block 1040, Block 1081, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Tract 18: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074; Precinct 11: Tract 12: Block Group 1: Block 1017, Block 1018, Block 1036, Block 1037, Block 1038, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1082; Tract 18: Block Group 1: Block 1000; Tract 19: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1016, Block 1022, Block 1023; Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21: Tract 14: Block Group 1: Block 1013, Block 1014, Block 1029, Block 1030, Block 1033, Block 1041, Block 1042, Block 1045, Block 1046, Block 1047, Block 1051; Block Group 3: Block 3003, Block 3009, Block 3010, Block 3012, Block 3014, Block 3015, Block 3016, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029; Precinct 23: Tract 4: Block Group 1: Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block

1019, Block 1020, Block 1021, Block 1022, Block 1025, Block 1026; Tract 13: Block Group 3: Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065; Precinct 24: Tract 10: Block Group 2: Block 2040, Block 2041, Block 2042, Block 2043, Block 2044; Precinct 25: Tract 8: Block Group 2: Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Block Group 3: Block 3019, Block 3028, Block 3029, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3050; Tract 9: Block Group 7: Block 7037, Block 7038, Block 7039, Block 7040; Tract 10: Block Group 1: Block 1026; Precinct 26: Tract 6.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1014, Block 1015, Block 1016, Block 1017; Tract 9: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4021, Block 4022, Block 4023; Block Group 5: Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5995, Block 5996; Block Group 7: Block 7000, Block 7001, Block 7002, Block 7003, Block 7004, Block 7005, Block 7006, Block 7007, Block 7008, Block 7009, Block 7010, Block 7011, Block 7012, Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7020, Block 7021, Block 7022, Block 7041; Precinct 27: Tract 6.01: Block Group 1: Block 1000, Block 1006, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1020, Block 1021, Block 1022, Block 1998, Block 1999; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3008, Block 3009; Tract 6.02: Block Group 2: Block 2027, Block 2997; Tract 9: Block Group 4: Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5997, Block 5998, Block 5999; Precinct 28: Tract 7: Block Group 3: Block 3002, Block 3033; Precinct 29: Tract 15: Block Group 1: Block 1001, Block 1002, Block 1003; Tract 18: Block Group 1: Block 1047, Block 1048, Block 1057, Block 1058, Block 1059, Block 1061, Block 1062; Precinct 30.

District 22: Bladen County, Cumberland County: Precinct Alderman, Precinct Beaver Dam & Cedar Creek, Precinct Cumberland 1, Hope Mills 1, & Stoney Point: Tract 16.01: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2043; Block Group 3: Block 3024; Tract 19.01: Block Group 1: Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040; Tract 31: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1064, Block 1065, Block 1995, Block 1996, Block 1997, Block 1998, Block 1999; Block Group 2, Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3034, Block 3035,

Block 3995, Block 3996, Block 3997; Block Group 4: Block 4026; Tract 32.01: Block Group 1: Block 1026, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1998; Block Group 2, Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034; Tract 32.04: Block Group 4: Block 4014; Precinct Hope Mills 2: Tract 16.01: Block Group 1: Block 1030, Block 1032, Block 1033, Block 1034, Block 1993, Block 1995, Block 1999; Block Group 2: Block 2996; Block Group 4: Block 4998, Block 4999; Tract 30: Block Group 1: Block 1007, Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2012, Block 2013; Block Group 5: Block 5014, Block 5015, Block 5019, Block 5020; Tract 31: Block Group 3: Block 3000, Block 3009, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3994, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4021, Block 4023, Block 4024, Block 4025, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4992, Block 4994, Block 4997, Block 4998, Block 4999; Precinct Judson-Vander: Tract 28: Block Group 3: Block 3027, Block 3028, Block 3029, Block 3030, Block 3999; Precinct Sherwood, Precinct Stedman: Tract 28: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1999; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Tract 29: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1013.

District 23: Edgecombe County: Precinct Battleboro, Precinct Conetoe, Precinct Lawrence, Precinct Leggett, Precinct Lewis, Precinct Macclesfield, Precinct Old Sparta, Precinct Pinetops, Precinct Speed, Precinct Tarboro 1, Precinct Tarboro 2, Precinct Tarboro 3, Precinct Tarboro 4, Precinct Whitakers; Wilson County: Precinct Black Creek, Precinct Crossroads, Precinct Gardners, Precinct Oldfields, Precinct Saratoga, Precinct Spring Hill, Precinct Stantonsburg, Precinct Taylors, Precinct Wilson I, Precinct Wilson J.

District 24: Edgecombe County: Precinct Rocky Mount 1, Precinct Rocky Mount 2, Precinct Rocky Mount 4, Precinct Rocky Mount 5, Precinct Sharpsburg, Precinct Temperance Hall, Precinct West Edgecombe; Wilson County: Precinct Toisnot, Precinct Wilson A, Precinct Wilson B, Precinct Wilson C, Precinct Wilson D, Precinct Wilson E, Precinct Wilson F, Precinct Wilson G, Precinct Wilson H, Precinct Wilson K, Precinct Wilson L, Precinct Wilson M, Precinct Wilson N, Precinct Wilson P, Precinct Wilson Q.

District 25: Nash County: Precinct Bailey, Precinct Castalia, Precinct Coopers, Precinct Drywells, Precinct Ferrells, Precinct Griffins: Tract 108: Block Group 1: Block 1064, Block 1065; Tract 109: Block Group 1: Block 1029, Block 1030, Block 1031, Block 1034, Block 1035, Block 1036, Block 1038, Block 1039; Block Group 2: Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4040, Block 4043, Block 4044, Block 4045, Block 4046, Block 4999; Precinct Jacksons, Precinct Mannings 1, Precinct Mannings 2, Precinct Nashville, Precinct Oak Level, Precinct Red Oak, Precinct Rocky Mount 04: Tract 102: Block Group 3: Block 3000, Block 3003, Block 3007, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024; Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5012, Block 5013; Tract 103: Block Group 4: Block 4012, Block 4013, Block 4019, Block 4020, Block 4021, Block 4022; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5004; Block Group 6: Block 6020, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6042, Block 6043, Block 6044, Block 6045, Block 6046; Precinct Rocky Mount 05, Precinct Rocky Mount 06, Precinct Rocky Mount 07, Precinct Rocky Mount 08, Precinct Rocky Mount 09, Precinct Stony Creek, Precinct Whitakers North 2.

District 26: Johnston County: Precinct Beulah North, Precinct Beulah South, Precinct Clayton East, Precinct Clayton North, Precinct Clayton South, Precinct Clayton West, Precinct Micro, Precinct Oneals North, Precinct Oneals South, Precinct Pine Level: Tract 403: Block Group 2: Block 2020, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062; Block Group 4: Block 4000, Block 4012, Block 4013, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4083, Block 4084; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6033; Tract 404: Block Group 1, Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3017, Block 3018, Block 3019, Block 3021, Block 3022, Block 3023; Precinct Selma East, Precinct Selma West, Precinct Smithfield East: Tract 406: Block Group 1, Block Group 2: Block 2012, Block 2013, Block 2014, Block 2016; Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025; Tract 407: Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2027,

Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Block Group 3: Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3046, Block 3047, Block 3048; Tract 408: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1042, Block 1043, Block 1044, Block 1045; Tract 412: Block Group 2: Block 2000; Precinct Smithfield North, Precinct Smithfield South: Tract 408: Block Group 1: Block 1005, Block 1006, Block 1019, Block 1030, Block 1031, Block 1040, Block 1041; Block Group 2, Block Group 3; Tract 409: Block Group 4: Block 4027, Block 4028; Tract 412: Block Group 1: Block 1012, Block 1014, Block 1015, Block 1016; Block Group 2: Block 2001; Precinct Wilders North, Precinct Wilders South, Precinct Wilsons Mills.

District 27: Northampton County, Vance County: Precinct Dabney, Precinct Henderson East 1, Precinct Henderson East 2, Precinct Henderson North 1, Precinct Henderson North 2, Precinct Henderson West 1, Precinct Henderson West 2, Precinct Middleburg, Precinct Townsville, Precinct Williamsboro; Warren County.

District 28: Johnston County: Precinct Banner North, Precinct Banner South, Precinct Banner West, Precinct Bentonville, Precinct Boon Hill North, Precinct Boon Hill South, Precinct Cleveland North, Precinct Cleveland South, Precinct Elevation North, Precinct Elevation South, Precinct Ingrams East, Precinct Ingrams West, Precinct Meadow North, Precinct Meadow South, Precinct Pine Level: Tract 404: Block Group 3: Block 3016, Block 3020, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039; Tract 407: Block Group 2: Block 2000, Block 2047; Precinct Pleasant Grove North, Precinct Pleasant Grove South, Precinct Smithfield East: Tract 406: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2015, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3019, Block 3026, Block 3027, Block 3028; Tract 407: Block Group 2: Block 2026, Block 2032, Block 2033, Block 2034, Block 2046; Tract 412: Block Group 2: Block 2007, Block 2008, Block 2999; Block Group 5: Block 5000, Block 5002; Precinct Smithfield South: Tract 409: Block Group 4: Block 4025, Block 4026; Block Group 5: Block 5050, Block 5051, Block 5052, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5063, Block 5064, Block 5065, Block 5066, Block 5067, Block 5068; Tract 412: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1013, Block 1998, Block 1999; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2993, Block 2998; Tract 415: Block Group 3: Block 3024; Sampson County: Precinct Autryville, Precinct Clement, Precinct Herring, Precinct Kitty Fork: Tract 9702: Block Group 4: Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4038; Tract 9705: Block Group 1: Block 1006, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Block Group 2: Block 2011; Precinct Mingo, Precinct Newton Grove: Tract 9702: Block Group 1: Block 1019, Block 1020, Block 1021; Block Group 2: Block 2006, Block 2009, Block 2062, Block 2063, Block 2064, Block 2066, Block 2067, Block

2068; Block Group 3: Block 3000, Block 3001, Block 3021, Block 3022, Block 3023; Precinct Plainview, Precinct Roseboro: Tract 9704: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1014, Block 1026, Block 1027; Block Group 3: Block 3006, Block 3007, Block 3048, Block 3049, Block 3050, Block 3053; Block Group 4: Block 4025, Block 4026, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045; Tract 9709: Block Group 1: Block 1036; Precinct Salemburg: Tract 9704: Block Group 1: Block 1000, Block 1001; Tract 9705: Block Group 2: Block 2013, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3062, Block 3065, Block 3066, Block 3067, Block 3071, Block 3073, Block 3074, Block 3075; Precinct Westbrook.

District 29: Durham County: Precinct 07, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 12, Precinct 13, Precinct 16, Precinct 17, Precinct 27, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42, Precinct 48, Precinct 49, Precinct 51, Precinct 53, Precinct 54: Tract 20.12: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3029, Block 3999.

District 30: Durham County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 05, Precinct 06, Precinct 24, Precinct 36, Precinct 37, Precinct 43, Precinct 44, Precinct 45: Tract 16.01: Block Group 2: Block 2007; Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Tract 16.03: Block Group 1, Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Tract 16.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1032, Block 1033, Block 1034; Block Group 2: Block 2037, Block 2043, Block 2044, Block 2046, Block 2047, Block 2048; Precinct 46, Precinct 50.

District 31: Durham County: Precinct 14, Precinct 15, Precinct 18, Precinct 19, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 35, Precinct 47, Precinct 52, Precinct 54: Tract 20.14: Block Group 1: Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1064.

District 32: Granville County, Vance County: Precinct Henderson South 1, Precinct Henderson South 2, Precinct Hilltop, Precinct Kittrell, Precinct Sandy Creek, Precinct Watkins.

District 33: Wake County: Precinct 01-12: Tract 518: Block Group 1: Block 1007, Block 1008, Block 1009; Block Group 3: Block 3000, Block 3001, Block 3008, Block 3018; Tract 527.01: Block Group 2: Block 2028, Block 2029, Block 2030, Block 2031, Block 2036, Block 2037, Block 2038, Block 2039; Precinct 01-13, Precinct 01-19, Precinct 01-20, Precinct 01-22, Precinct 01-28, Precinct 01-34, Precinct 01-38, Precinct 01-40, Precinct 01-46, Precinct 13-01: Tract

527.04: Block Group 1: Block 1000, Block 1028; Tract 325.02, Tract 540.10: Block Group 2: Block 2007, Block 2015, Block 2016, Block 2017, Block 2018, Block 2024, Block 2029, Block 2030, Block 2031; Tract 541.04: Block Group 1: Block 1010, Block 1016, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1058; Precinct 13-07: Tract 540.09: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036; Block Group 2: Block 2112, Block 2113, Block 2114, Block 2115, Block 2116, Block 2117, Block 2118, Block 2119, Block 2120, Block 2121, Block 2122, Block 2123, Block 2124, Block 2125, Block 2126, Block 2127, Block 2128, Block 2129, Block 2130; Precinct 17-01, Precinct 17-03, Precinct 17-05, Precinct 17-07, Precinct 17-09, Precinct 17-10, Precinct 17-11.

District 34: Wake County: Precinct 01-10, Precinct 01-11, Precinct 01-15, Precinct 01-17, Precinct 01-18, Precinct 01-30, Precinct 01-36, Precinct 01-37, Precinct 01-39, Precinct 01-42, Precinct 01-43, Precinct 01-44, Precinct 01-45, Precinct 01-51, Precinct 07-02, Precinct 07-03, Precinct 07-04, Precinct 07-06, Precinct 07-09, Precinct 07-11, Precinct 07-13, Precinct 13-02, Precinct 13-05, Precinct 13-06.

District 35: Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-03, Precinct 01-04, Precinct 01-16, Precinct 01-29, Precinct 01-31, Precinct 01-32, Precinct 01-33, Precinct 01-41, Precinct 01-48, Precinct 01-49, Precinct 04-02, Precinct 04-05, Precinct 04-08, Precinct 04-11, Precinct 04-17, Precinct 04-18, Precinct 04-21, Precinct 07-01: Tract 525.01: Block Group 1: Block 1016, Block 1017; Precinct 11-01, Precinct 11-02, Precinct 18-06: Tract 530.02: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1012.

District 36: Wake County: Precinct 04-01, Precinct 04-03, Precinct 04-04, Precinct 04-06, Precinct 04-07, Precinct 04-10, Precinct 04-12, Precinct 04-14, Precinct 04-15, Precinct 04-16, Precinct 04-20, Precinct 18-02, Precinct 18-03, Precinct 18-04: Tract 530.01: Block Group 1: Block 1000, Block 1010, Block 1011, Block 1012, Block 1998, Block 1999; Precinct 18-05, Precinct 18-06: Tract 523.01: Block Group 1: Block 1003, Block 1005, Block 1006, Block 1017, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 524.04: Block Group 1: Block 1043, Block 1996, Block 1997, Block 1998, Block 1999; Tract 530.01: Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Tract 530.02: Block Group 1: Block 1000, Block 1001, Block 1002,Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1049, Block 1050, Block 1057, Block 1058, Block 1993, Block 1994, Block 1998, Block 1999; Precinct 18-07, Precinct 18-08, Precinct 20-03, Precinct 20-05, Precinct 20-09.

District 37: Wake County: Precinct 03-00, Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-05, Precinct 12-06, Precinct 12-07, Precinct 15-01, Precinct 15-02: Tract 529: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2027, Block 2031, Block 2032, Block 2033; Tract 531.03: Block Group 1: Block 1000, Block 1021, Block 1022, Block 1023; Precinct 15-03, Precinct 20-01, Precinct 20-06, Precinct 20-07: Tract 534.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1034, Block 1035, Block

1036, Block 1039, Block 1040, Block 1041, Block 1077, Block 1078; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4017, Block 4039, Block 4040, Block 4041, Block 4042, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4077, Block 4078, Block 4080, Block 4081, Block 4147, Block 4148; Precinct 20-08.

District 38: Wake County: Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-09, Precinct 01-12: Tract 517: Block Group 1: Block 1008; Tract 518: Block Group 1: Block 1010, Block 1011, Block 1020, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017; Precinct 01-14, Precinct 01-21, Precinct 01-23, Precinct 01-25, Precinct 01-26, Precinct 01-27, Precinct 01-35, Precinct 01-50, Precinct 15-02: Tract 530.02: Block Group 4; Precinct 15-04, Precinct 16-02: Tract 522.02: Block Group 1: Block 1046, Block 1047, Block 1048, Block 1049, Block 1054, Block 1055, Block 1057, Block 1058, Block 1066, Block 1067, Block 1068, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1081, Block 1082, Block 1083, Block 1084; Tract 528.03: Block Group 4: Block 4002; Precinct 16-03, Precinct 16-05, Precinct 16-06: Tract 528.01: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017; Block Group 4; Precinct 16-07, Precinct 18-01, Precinct 18-04: Tract 528.02: Block Group 1: Block 1007, Block 1008; Tract 530.01: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029; Tract 530.02: Block Group 1: Block 1047, Block 1048, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1992; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 5: Block 5000, Block 5001, Block 5010.

District 39: Wake County: Precinct 09-01, Precinct 09-02, Precinct 09-03, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 13-01: Tract 541.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1040; Precinct 13-03: Tract 540.09: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Block Group 2: Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2100; Precinct 13-07: Tract 540.09: Block Group 2: Block 2099, Block 2101, Block 2102, Block 2103, Block 2104, Block 2105, Block 2106, Block 2107, Block 2108, Block 2109, Block 2110, Block 2111; Precinct 16-01, Precinct 16-02: Tract 521.01: Block Group 2: Block 2034; Tract 528.03: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067,

Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075; Block Group 3, Block Group 4: Block 4000, Block 4001, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008; Tract 528.04: Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3999; Precinct 16-04, Precinct 16-06: Tract 528.05: Block Group 2, Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3999; Block Group 4; Precinct 16-08, Precinct 16-09, Precinct 17-02, Precinct 17-04, Precinct 17-06, Precinct 17-08, Precinct 19-08: Tract 541.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1999.

District 40: Wake County: Precinct 01-47, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 07-05, Precinct 08-04, Precinct 08-05, Precinct 08-07, Precinct 08-08, Precinct 13-03: Tract 540.09: Block Group 2: Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087; Precinct 13-04, Precinct 14-01, Precinct 14-02, Precinct 19-01, Precinct 19-02, Precinct 19-03, Precinct 19-04, Precinct 19-05, Precinct 19-06, Precinct 19-07, Precinct 19-08: Tract 542.02: Block Group 4: Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4024, Block 4025, Block 4026, Block 4997, Block 4998.

District 41: Wake County: Precinct 04-09, Precinct 04-13, Precinct 04-19, Precinct 05-01, Precinct 05-02, Precinct 05-03, Precinct 07-01: Tract 525.01: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041; Precinct 07-07, Precinct 07-10, Precinct 07-12, Precinct 08-01, Precinct 08-02, Precinct 08-03, Precinct 08-06, Precinct 08-09, Precinct 20-02, Precinct 20-04, Precinct 20-07: Tract 534.03: Block Group 1: Block 1037, Block 1038, Block 1079, Block 1080; Block Group 2: Block 2053, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072; Block Group 4: Block 4012, Block 4043, Block 4044; Precinct 20-10.

District 42: Cumberland County: Precinct Auman, Precinct Cliffdale West, Precinct Cross Creek 17, Precinct Cross Creek 27: Tract 33.07: Block Group 2: Block 2000; Tract 33.08: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014; Precinct Cross Creek 28: Tract 32.03: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1014, Block 1015; Tract 32.04: Block Group 1: Block 1001; Tract 32.05: Block Group 2: Block 2000, Block 2001, Block 2003, Block 2004; Tract 33.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1999; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3018,

Block 3019, Block 3020, Block 3996, Block 3997, Block 3998, Block 3999; Tract 33.07: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2999; Precinct Cross Creek 32, Precinct Cumberland 1, Hope Mills 1, & Stoney Point: Tract 32.01: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025, Block 1028, Block 1038, Block 1999; Tract 32.04: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4998, Block 4999; Block Group 5: Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5998, Block 5999; Precinct Lake Rim, Precinct Manchester: Tract 34: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2017, Block 2018, Block 2020, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2074, Block 2087, Block 2088, Block 2089, Block 2090, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2997, Block 2998, Block 2999; Tract 35: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1009, Block 1013; Block Group 2: Block 2000, Block 2007, Block 2008, Block 2009; Tract 36: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1030, Block 1031, Block 1032, Block 1993, Block 1994, Block 1995, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2012, Block 2013, Block 2017, Block 2031, Block 2037, Block 2038, Block 2047, Block 2048, Block 2049, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2995, Block 2996, Block 2998, Block 2999; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4037, Block 4039, Block 4043, Block 4044, Block 4045, Block 4046, Block 4998; Tract 37: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2025, Block 2026, Block 2043, Block 2995; Precinct Montibello, Precinct Spring Lake, Precinct Westarea: Tract 24: Block Group 1: Block 1008, Block 1009, Block 1015, Block 1999; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Block Group 4: Block 4014, Block 4015, Block 4016, Block 4017.

District 43: Cumberland County: Precinct Cross Creek 01, Precinct Cross Creek 03: Tract 22: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2023, Block 2024; Tract 23: Block Group 1, Block Group 9: Block 9001, Block 9002, Block 9003, Block 9998; Precinct Cross Creek 05, Precinct Cross Creek 09, Precinct Cross Creek 13, Precinct Cross Creek 16,

Precinct Cross Creek 19, Precinct Cross Creek 21, Precinct Cross Creek 23: Tract 25.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1011; Block Group 9: Block 9074, Block 9075; Precinct Cross Creek 26: Tract 33.04: Block Group 2: Block 2000, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3010; Precinct Cross Creek 33, Precinct Long Hill: Tract 25.04: Block Group 2: Block 2002, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028; Precinct Manchester: Tract 34: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2051, Block 2052, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2091; Precinct Westarea: Tract 24: Block Group 1: Block 1007; Block Group 2: Block 2000, Block 2001; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4018, Block 4019; Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5011; Tract 25.01: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 9: Block 9000, Block 9001, Block 9002, Block 9003, Block 9004, Block 9006, Block 9010, Block 9011, Block 9016, Block 9017, Block 9018, Block 9019, Block 9020, Block 9024, Block 9044, Block 9076, Block 9077; Tract 25.02: Block Group 1: Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1015, Block 1016, Block 1017, Block 1019, Block 1022, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1034, Block 1035, Block 1036, Block 1997; Block Group 3: Block 3007, Block 3010, Block 3011, Block 3012, Block 3997; Tract 25.03: Block Group 2: Block 2027, Block 2028, Block 2029, Block 2030; Tract 25.04: Block Group 3.

District 44: Cumberland County: Precinct Arran Hills, Precinct Brentwood, Precinct Cross Creek 03: Tract 20: Block Group 1: Block 1001, Block 1002, Block 1003; Tract 22: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Precinct Cross Creek 04, Precinct Cross Creek 06, Precinct Cross Creek 07, Precinct Cross Creek 08, Precinct Cross Creek 12: Tract 7: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3033, Block 3034, Block 3999; Block Group 4: Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Precinct Cross Creek 14, Precinct Cross Creek 15: Tract 6: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 2, Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3011; Tract 18: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003; Block Group 2: Block 2000, Block 2001; Precinct Cross Creek 18: Tract 7: Block Group 4: Block 4007, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4023; Precinct Cross Creek 20, Precinct Cross Creek 24, Precinct Cross Creek 25, Precinct Cross Creek 26: Tract 20: Block Group 2: Block 2997, Block 2998, Block 2999; Tract 33.04: Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008,

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District 47: Robeson County: Precinct Back Swamp: Tract 9605: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5040; Tract 9608: Block Group 1: Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1999; Block Group 4: Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091; Tract 9618: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2014, Block 2016, Block 2017, Block 2018, Block 2021, Block 2022, Block 2023, Block 2024, Block 2998, Block 2999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4049, Block 4050, Block 4051; Precinct Burnt Swamp, Precinct Lumber Bridge, Precinct Lumberton 1, Precinct Lumberton 2: Tract 9609: Block Group 1: Block 1000; Tract 9610: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038; Block Group 3: Block 3001, Block 3002; Tract 9612: Block Group 1: Block 1012, Block 1014; Tract 9613: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block

1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029; Block Group 4: Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Precinct Lumberton 7: Tract 9608: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1076, Block 1077, Block 1078, Block 1089, Block 1090, Block 1091; Block Group 2: Block 2016; Block Group 3: Block 3010; Precinct Lumberton 8, Precinct Oxendine, Precinct Pembroke North, Precinct Pembroke South, Precinct Philadelphus, Precinct Prospect, Precinct Raft Swamp, Precinct Red Springs 1, Precinct Red Springs 2, Precinct Rennert, Precinct Saddletree, Precinct Shannon, Precinct Smyrna: Tract 9616: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Block Group 2: Block 2010; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct Thompson, Precinct Union.

District 48: Hoke County: Precinct Allendale, Precinct Antioch, Precinct Blue Springs, Precinct Mccain: Tract 9702: Block Group 3: Block 3001, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062; Precinct Raeford 1, Precinct Raeford 2, Precinct Raeford 3, Precinct Raeford 4, Precinct Raeford 5, Precinct Stonewall: Tract 9704: Block Group 1: Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1031, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1997; Block Group 2: Block 2000; Robeson County: Precinct Alfordsville, Precinct Back Swamp: Tract 9618: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2015, Block 2019, Block 2020; Precinct Britts, Precinct Fairmont 1, Precinct Fairmont 2, Precinct Gaddys, Precinct Lumberton 2: Tract 9612: Block Group 1: Block 1010, Block 1011, Block 1013, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1024, Block 1025; Precinct Lumberton 3: Tract 9610: Block Group 3: Block 3000; Tract 9612: Block Group 1: Block 1022, Block 1023, Block 1026, Block 1027, Block 1028, Block 1038, Block 1039; Precinct Lumberton 5, Precinct Lumberton 6, Precinct Lumberton 7: Tract 9608: Block Group 1: Block 1000, Block 1031, Block 1032, Block 1033, Block 1039, Block 1040, Block 1052, Block 1053, Block 1100; Block Group 2: Block 2015; Block Group 3: Block 3009, Block 3011; Precinct Maxton, Precinct Orrum, Precinct Rowland, Precinct Smyrna: Tract 9608: Block Group 4: Block 4051, Block 4052, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072; Tract 9616: Block Group 1: Block 1006; Block Group 2: Block 2011; Block Group 3: Block 3020, Block 3035, Block 3036, Block 3037, Block 3038; Precinct Sterlings, Precinct Whitehouse; Scot-

land County: Precinct 01, Precinct 02, Precinct 04: Tract 101: Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036; Tract 103: Block Group 1: Block 1055, Block 1056; Precinct 06, Precinct 07, Precinct 08: Tract 102: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1006, Block 1010; Tract 106: Block Group 5: Block 5000, Block 5001, Block 5029, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5047, Block 5048, Block 5049.

District 49: Franklin County, Halifax County: Precinct Butterwood: Tract 9908: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016, Block 1017, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1999; Precinct Hollister: Tract 9908: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1035; Block Group 2: Block 2012; Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4018, Block 4019; Precinct Littleton 1: Tract 9907: Block Group 2: Block 2014, Block 2015, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2993; Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050; Block Group 4: Block 4002, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021; Tract 9908: Block Group 1: Block 1001, Block 1002, Block 1003; Precinct Littleton 2, Precinct Roanoke Rapids 01, Precinct Roanoke Rapids 02, Precinct Roanoke Rapids 03, Precinct Roanoke Rapids 04, Precinct Roanoke Rapids 05, Precinct Roanoke Rapids 06, Precinct Roanoke Rapids 11: Tract 9903: Block Group 1: Block 1999; Tract 9905: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1039, Block 1044, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2006, Block 2997, Block 2998, Block 2999; Tract 9907: Block Group 2: Block 2996; Nash County: Precinct Griffins: Tract 109: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1032, Block 1033, Block 1037, Block 1040, Block 1041, Block 1045, Block 1046.

District 50: Caswell County, Orange County: Precinct Caldwell, Precinct Cameron Park, Precinct Carr, Precinct Cedar Grove, Precinct Cheeks, Precinct Coles Store, Precinct Efland, Precinct Eno, Precinct Grady Brown, Precinct Hillsborough, Precinct Hillsborough West, Precinct Orange Grove, Precinct St Marys, Precinct Tolars.

District 51: Harnett County: Precinct Barbeque, Precinct Buckhorn, Precinct Johnsonville, Precinct U.L.R. 2; Lee County.

District 52: Moore County: Precinct Aberdeen East, Precinct Aberdeen West, Precinct Bensalem, Precinct Carthage: Tract 9501: Block Group 2: Block 2043, Block 2044, Block 2045, Block 2046, Block 2047; Block Group 3: Block 3022, Block 3023, Block 3024, Block 3029, Block 3033, Block 3034, Block 3035, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041; Tract 9503: Block Group 1: Block 1038, Block 1039; Block Group 2: Block 2010; Block Group 3: Block 3001, Block 3002; Tract 9504: Block Group 1: Block 1048, Block 1049, Block 1050, Block 1051; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037, Block 2038; Block Group 3, Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5020, Block 5021, Block 5027, Block 5028, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5039, Block 5040, Block 5041, Block 5042, Block 5072, Block 5073, Block 5074; Block Group 6: Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018, Block 6019, Block 6020, Block 6021, Block 6022, Block 6023, Block 6024, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6037, Block 6038, Block 6039, Block 6040, Block 6041, Block 6042, Block 6043, Block 6044, Block 6045, Block 6046, Block 6047, Block 6048, Block 6049, Block 6050, Block 6051, Block 6052, Block 6053, Block 6054, Block 6055, Block 6056, Block 6057, Block 6058, Block 6059, Block 6060, Block 6061, Block 6065, Block 6066, Block 6073, Block 6074, Block 6075, Block 6076, Block 6080, Block 6081, Block 6082, Block 6083, Block 6084, Block 6085; Tract 9505.01: Block Group 1: Block 1015, Block 1016, Block 1017; Tract 9505.02: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2019, Block 2020, Block 2021, Block 2995; Precinct Deep River/High Falls/Ritter, Precinct Eastwood, Precinct Eureka, Precinct Knollwood, Precinct Little River, Precinct Pinebluff, Precinct Pinedene, Precinct Pinehurst A, Precinct Pinehurst B, Precinct Pinehurst C, Precinct Robbins, Precinct Seven Lakes, Precinct Southern Pines North, Precinct Southern Pines South, Precinct Taylortown, Precinct Vass, Precinct West End, Precinct Westmoore.

District 53: Harnett County: Precinct Anderson Creek, Precinct Averasboro 1, Precinct Averasboro 2, Precinct Averasboro 3, Precinct Averasboro 4, Precinct Averasboro 5, Precinct Black River, Precinct Duke 1, Precinct Duke 2, Precinct Duke 3, Precinct Grove 1, Precinct Grove 2, Precinct Hectors Creek, Precinct Lillington, Precinct Neils Creek 1, Precinct Neils Creek 2, Precinct Stewarts Creek, Precinct U.L.R. 1.

District 54: Chatham County, Moore County: Precinct Cameron, Precinct Carthage: Tract 9501: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058;

Block Group 2: Block 2000, Block 2001, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Tract 9504: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1020, Block 1028, Block 1029, Block 1030, Block 1032, Block 1033, Block 1034, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1047, Block 1999; Block Group 2: Block 2035; Block Group 6: Block 6001, Block 6064; Orange County: Precinct Damascus, Precinct Dogwood Acres, Precinct Kings Mill, Precinct St John, Precinct White Cross.

District 55: Durham County: Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 25, Precinct 26, Precinct 28, Precinct 45: Tract 16.01: Block Group 1: Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Block Group 3: Block 3011, Block 3012, Block 3021; Tract 17.08: Block Group 1: Block 1003; Person County.

District 56: Orange County: Precinct Battle Park, Precinct Booker Creek, Precinct Carrboro, Precinct Carrboro North, Precinct Cedar Falls, Precinct Coker Hills, Precinct Colonial Heights, Precinct Country Club, Precinct Eastside, Precinct Estes Hills, Precinct Franklin East, Precinct Glenwood, Precinct Greenwood, Precinct Lincoln, Precinct Lions Club, Precinct Mason Farm, Precinct Northside, Precinct Owasa, Precinct Patterson, Precinct Ridgefield, Precinct Town Hall, Precinct Weaver Dairy, Precinct Weaver Dairy Satellite, Precinct Westwood.

District 57: Guilford County: Precinct Friendship 1, Precinct Friendship 2: Tract 164.03: Block Group 1: Block 1007, Block 1008, Block 1056; Tract 164.04: Block Group 1: Block 1000; Tract 165.03: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005; Precinct GB 15, Precinct GB 16, Precinct GB 33, Precinct GB 34, Precinct GB 35, Precinct GB 36, Precinct GB 37, Precinct GB 38, Precinct GB 39: Tract 125.06: Block Group 1: Block 1065, Block 1067; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3007; Precinct GB 43, Precinct GB 47: Tract 116.01: Block Group 1: Block 1000, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1023, Block 1024, Block 1025, Block 1026, Block 1029; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2013, Block 2014, Block 2020; Precinct GB 48, Precinct GB 49, Precinct GB 50, Precinct GB 51, Precinct GB 56, Precinct GB 58, Precinct GB 60, Precinct GB 61, Precinct GB 62, Precinct GB 63, Precinct GB 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4067; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct GB 65, Precinct GB 66, Precinct HP: Tract 164.03: Block Group 1: Block 1009, Block 1031; Precinct Jamestown 3: Tract 126.09: Block Group 2: Block 2008, Block 2009,

Block 2010, Block 2011, Block 2012, Block 2025, Block 2029, Block 2030, Block 2033, Block 2045, Block 2047; Tract 165.02: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1010, Block 1011, Block 1012, Block 1013, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029; Tract 165.04: Block Group 1: Block 1058, Block 1064.

District 58: Guilford County: Precinct Clay North 1, Precinct Clay North 2, Precinct Clay South, Precinct Fentress 1, Precinct Fentress 2, Precinct GB 03, Precinct GB 04, Precinct GB 05, Precinct GB 06, Precinct GB 46: Tract 108.01: Block Group 1: Block 1067, Block 1073, Block 1079; Tract 113: Block Group 2: Block 2014, Block 2017, Block 2018; Tract 114: Block Group 1: Block 1001, Block 1002, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003; Precinct GB 52: Tract 113: Block Group 2: Block 2015, Block 2016, Block 2019, Block 2020, Block 2021; Precinct GB 53: Tract 128.04: Block Group 1: Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1027; Precinct GB 67, Precinct GB 68, Precinct GB 69, Precinct GB 70, Precinct GB 71, Precinct GB 72, Precinct GB 73, Precinct GB 74, Precinct GB 75, Precinct Gibsonville, Precinct Greene, Precinct Jefferson 1, Precinct Jefferson 2, Precinct Jefferson 3, Precinct Jefferson 4, Precinct Pleasant Garden 1: Tract 168: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Tract 169: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007; Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Washington South.

District 59: Guilford County: Precinct GB 01, Precinct GB 02, Precinct GB 07, Precinct GB 08, Precinct GB 09, Precinct GB 10, Precinct GB 11, Precinct GB 12, Precinct GB 13, Precinct GB 14, Precinct GB 17, Precinct GB 18, Precinct GB 19, Precinct GB 20, Precinct GB 21, Precinct GB 22, Precinct GB 23, Precinct GB 26, Precinct GB 31, Precinct GB 44, Precinct GB 45, Precinct Madison North, Precinct Madison South, Precinct Monroe 1, Precinct Monroe 2, Precinct Monroe 3, Precinct Washington North.

District 60: Guilford County: Precinct GB 46: Tract 113: Block Group 2: Block 2013; Tract 114: Block Group 1: Block 1008, Block 1015, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Block Group 2, Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011; Block Group 4, Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005; Block Group 6; Tract 115: Block Group 1: Block 1000, Block 1001, Block 1012, Block 1013, Block 1014; Block Group 2: Block 2000, Block 2001; Precinct GB 47: Tract 115: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3, Block Group 4; Tract 126.04: Block Group 3: Block 3008, Block 3015, Block 3016; Precinct GB 52: Tract 114: Block Group 5: Block 5006, Block 5007, Block 5008; Tract 126.04: Block Group 1, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3017; Precinct GB 53: Tract 128.04: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1012, Block 1013, Block 1026, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Block Group 2; Tract 168: Block Group 2: Block 2012, Block 2015, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2047; Precinct GB

54, Precinct GB 55, Precinct GB 57, Precinct GB 59, Precinct HP 02: Tract 140: Block Group 1: Block 1015, Block 1016, Block 1021, Block 1022, Block 1023; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2032, Block 2033, Block 2034; Precinct HP 03: Tract 142: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3021, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038; Tract 143: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1017, Block 1018; Block Group 2: Block 2006; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3033, Block 3034, Block 3035; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035; Tract 146: Block Group 1: Block 1055, Block 1056, Block 1057, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080; Precinct HP 04: Tract 145.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1008; Tract 166: Block Group 1: Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055; Precinct HP 05, Precinct HP 07, Precinct HP 08, Precinct HP 09, Precinct HP 10: Tract 139: Block Group 1: Block 1000; Tract 144.06: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2; Tract 145.03: Block Group 1: Block 1056; Precinct HP 11, Precinct HP 12: Tract 136.02: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2000, Block 2001, Block 2003, Block 2004, Block 2010, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 3: Block 3018; Tract 138: Block Group 4: Block 4006, Block 4007, Block 4010, Block 4011, Block 4012, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Tract 146: Block Group 1: Block 1000, Block 1001, Block 1035, Block 1036, Block 1037, Block 1038; Precinct HP 17: Tract 136.02: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Block Group 4: Block 4000, Block 4011, Block 4012, Block 4013; Precinct HP 18: Tract 144.05: Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2019, Block 2020; Block Group 3: Block 3003, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014, Block 3015; Precinct HP 19A: Tract 144.05: Block Group 2: Block 2011, Block 2015, Block 2016, Block 2017, Block 2018, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Precinct Jamestown 5: Tract 145.02: Block Group 1: Block 1005, Block 1009, Block 1999; Tract 164.02: Block Group 2: Block 2072, Block 2073, Block 2079, Block 2080, Block 2086; Tract 166: Block Group 1: Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1034, Block 1037, Block 1038, Block 1039, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block

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District 61: Guilford County: Precinct Deep River South: Tract 162.02: Block Group 1: Block 1015, Block 1016, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1044, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1055, Block 1056, Block 1075, Block 1076, Block 1079, Block 1087, Block 1088, Block 1092, Block 1093, Block 1094, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1101, Block 1108, Block 1115, Block 1118, Block 1119, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1134, Block 1135, Block 1136, Block 1137, Block 1138, Block 1139, Block 1140, Block 1141, Block 1142, Block 1145, Block 1146; Tract 163.01: Block Group 2: Block 2012; Precinct Friendship 2: Tract 164.03: Block Group 1: Block 1053, Block 1054, Block 1055, Block 1057; Tract 164.04: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1105, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117; Precinct HP: Tract 162.02: Block Group 1: Block 1041, Block 1042, Block 1043, Block 1045; Tract 163.02: Block Group 2: Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2054, Block 2055, Block 2056, Block 2057, Block 2997, Block 2998, Block 2999; Tract 164.02: Block Group 1: Block 1022, Block 1024, Block 1025, Block 1026, Block 1061, Block 1062, Block 1063, Block 1069, Block 1070, Block 1071, Block 1072, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block

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District 62: Guilford County: Precinct Center Grove 1, Precinct Center Grove 2, Precinct Center Grove 3, Precinct Center Grove North, Precinct Deep River North, Precinct Deep River South: Tract 162.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1143, Block 1144; Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct GB 24, Precinct GB 25, Precinct GB 27, Precinct GB 28, Precinct GB 29, Precinct GB 30, Precinct GB 32, Precinct GB 39: Tract 161.01: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016; Precinct GB 40A, Precinct GB 40B, Precinct GB 41, Precinct GB 42, Precinct GB 64: Tract 160.04: Block Group 4: Block 4063, Block 4064, Block 4065, Block 4066, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1002, Block 1003; Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Stokesdale, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4.

District 63: Alamance County: Precinct Burlington 04, Precinct Burlington 05, Precinct Burlington 07, Precinct Burlington 08, Precinct Burlington 10, Precinct Burlington East, Precinct Burlington North, Precinct Burlington South, Precinct Burlington West, Precinct Graham 3, Precinct Graham East, Precinct Graham North, Precinct Graham West, Precinct Haw River, Precinct Melville North, Precinct Melville South, Precinct Pleasant Grove.

District 64: Alamance County: Precinct Albright, Precinct Boone 5, Precinct Boone Central, Precinct Boone North, Precinct Boone South, Precinct Boone West, Precinct Burlington 06, Precinct Burlington 09, Precinct Coble, Precinct Faucette, Precinct Graham 4, Precinct Graham South, Precinct Melville 3, Precinct Morton, Precinct Newlin North, Precinct Newlin South, Precinct Patterson, Precinct Thompson North, Precinct Thompson South.

District 65: Rockingham County: Precinct Bethlehem, Precinct Central Area, Precinct Draper, Precinct Ironworks: Tract 415: Block Group 5: Block 5004, Block 5005, Block 5006, Block 5009, Block 5010, Block 5997; Tract 416: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3012, Block 3013, Block 3014, Block 3015, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3041, Block 3992, Block 3993, Block 3999; Precinct Leaksville 1, Precinct Leaksville 2, Precinct Leaksville 3, Precinct Mayfield, Precinct Oregon Hill, Precinct Price, Precinct Reidsville 1, Precinct Reidsville 2, Precinct Reidsville 3, Precinct Reidsville 4, Precinct Reidsville 5, Precinct Reidsville 6, Precinct Ruffin, Precinct Shiloh, Precinct Simpsonville: Tract 411: Block Group 5: Block 5000, Block 5001, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024; Tract 412: Block Group 1: Block 1024; Tract 415: Block Group 5: Block 5000, Block 5001; Tract 416: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1039; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2022, Block 2023, Block 2024, Block

2025, Block 2026, Block 2027, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2998, Block 2999; Precinct Spray 1, Precinct Stoneville, Precinct Wentworth, Precinct Williamsburg.

District 66: Montgomery County: Precinct Biscoe, Precinct Candor, Precinct Cheeks Creek, Precinct Little River, Precinct Mt Gilead, Precinct Ophir, Precinct Pee Dee, Precinct Rocky Springs, Precinct Star, Precinct Troy 1, Precinct Troy 2, Precinct Uwharrie: Tract 9603: Block Group 1: Block 1160, Block 1165, Block 1166; Block Group 2: Block 2003, Block 2004, Block 2006; Precinct Wadeville; Richmond County.

District 67: Montgomery County: Precinct Eldorado, Precinct Uwharrie: Tract 9602: Block Group 4: Block 4058; Tract 9603: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2998, Block 2999; Tract 9604: Block Group 4: Block 4033, Block 4997; Stanly County, Union County: Precinct 11, Precinct 12: Tract 202.01: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4025, Block 4026, Block 4027; Precinct 13: Tract 202.01: Block Group 4: Block 4005, Block 4006, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023; Precinct 32.

District 68: Union County: Precinct 05, Precinct 06, Precinct 07: Tract 210.03: Block Group 1: Block 1021, Block 1022, Block 1026, Block 1027, Block 1042, Block 1043, Block 1044, Block 1045; Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3045; Precinct 12: Tract 202.02: Block Group 4: Block 4010, Block 4020; Precinct 13: Tract 202.01: Block Group 4: Block 4024; Tract 202.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1016, Block 1024, Block 1025; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019; Precinct 14, Precinct 15, Precinct 16, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21,

Precinct 22 & 33, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 34: Tract 206: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Precinct 35, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42.

District 69: Anson County, Union County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 07: Tract 205: Block Group 4: Block 4011, Block 4012, Block 4013, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034; Tract 209.02: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2013; Tract 210.03: Block Group 3: Block 3000, Block 3001, Block 3041, Block 3042, Block 3043, Block 3044; Precinct 08, Precinct 09, Precinct 10, Precinct 23, Precinct 24, Precinct 25, Precinct 26, Precinct 27, Precinct 34: Tract 201: Block Group 2: Block 2047, Block 2048; Block Group 3: Block 3012, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3998, Block 3999; Tract 206: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1029, Block 1030, Block 1998, Block 1999; Tract 207: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2013, Block 2014, Block 2038, Block 2039; Precinct 36, Precinct 43.

District 70: Randolph County: Precinct Archdale 1, Precinct Archdale 2, Precinct Archdale 3, Precinct Asheboro Armory, Precinct Asheboro Eastside, Precinct Asheboro Lindley Park, Precinct Asheboro North 2, Precinct Falls, Precinct Franklinville, Precinct Level Cross, Precinct Liberty, Precinct New Market North, Precinct New Market South, Precinct Providence 1, Precinct Providence 2, Precinct Ramseur, Precinct Randleman East, Precinct Randleman West, Precinct Staley.

District 71: Forsyth County: Precinct 042: Tract 35: Block Group 4: Block 4006, Block 4007; Precinct 043: Tract 34.01: Block Group 1: Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1033, Block 1034, Block 1035, Block 1036, Block 1041, Block 1043, Block 1045, Block 1046; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Precinct 082: Tract 17: Block Group 1: Block 1000; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042; Tract 30.01: Block Group 1: Block 1050, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block

1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1093, Block 1094, Block 1095, Block 1998, Block 1999; Tract 30.02: Block Group 2: Block 2029, Block 2032, Block 2033, Block 2034; Precinct 122: Tract 37: Block Group 4: Block 4036, Block 4037, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4083, Block 4084; Precinct 301, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506: Tract 36: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012; Block Group 2: Block 2000, Block 2001, Block 2005, Block 2006, Block 2007, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2999; Precinct 507: Tract 33.03: Block Group 2: Block 2006, Block 2007, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2020, Block 2021, Block 2023, Block 2024, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2052, Block 2053, Block 2054, Block 2055, Block 2062, Block 2998; Block Group 3: Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Tract 34.01: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1037, Block 1038, Block 1039, Block 1040, Block 1052, Block 1053, Block 1054, Block 1055; Precinct 601: Tract 9: Block Group 1, Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3013, Block 3014; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4008, Block 4009, Block 4015, Block 4016, Block 4017, Block 4018; Tract 10: Block Group 1: Block 1000, Block 1001, Block 1006, Block 1007, Block 1008, Block 1009; Block Group 2: Block 2004; Precinct 602: Tract 37: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2998, Block 2999; Precinct 603, Precinct 604: Tract 10: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Block Group 3: Block 3000, Block 3001, Block 3012, Block 3013, Block 3014; Tract 37: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022; Precinct 605: Tract 20.02: Block Group 1: Block 1001, Block 1002, Block 1012, Block 1013, Block 1014; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2007, Block 2016, Block 2017; Tract 36: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2008, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2998; Block Group 3: Block 3007, Block 3008, Block 3009; Tract 37: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Precinct 606, Precinct 704: Tract 10: Block Group 3: Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3009, Block 3010, Block 3011; Tract 21: Block Group 1: Block 1007; Precinct

902: Tract 1: Block Group 1: Block 1033, Block 1034, Block 1048, Block 1049, Block 1050, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1090, Block 1091, Block 1092; Tract 2: Block Group 1: Block 1014, Block 1015, Block 1018, Block 1019, Block 1020, Block 1021, Block 1024, Block 1025, Block 1026; Tract 11: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022.

District 72: Forsyth County: Precinct 031: Tract 28.07: Block Group 1: Block 1000, Block 1001, Block 1011, Block 1012, Block 1022, Block 1023, Block 1024, Block 1025; Precinct 032: Tract 28.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Tract 28.05: Block Group 3: Block 3077, Block 3078, Block 3079; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4017, Block 4018; Tract 28.06: Block Group 1: Block 1009, Block 1010, Block 1011, Block 1031; Precinct 033: Tract 27.02: Block Group 1: Block 1000, Block 1001, Block 1012; Tract 28.05: Block Group 2: Block 2027, Block 2028; Tract 28.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038; Block Group 2; Tract 28.07: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021; Tract 29.01: Block Group 2: Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2029, Block 2030, Block 2031, Block 2033; Precinct 081, Precinct 082: Tract 17: Block Group 5: Block 5004, Block 5005, Block 5006, Block 5007, Block 5008; Tract 30.02: Block Group 2: Block 2035, Block 2036, Block 2037; Precinct 083: Tract 16.01: Block Group 1: Block 1000, Block 1012, Block 1013; Tract 29.02: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100; Block Group 2: Block 2000, Block 2011; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039; Tract 30.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2020, Block 2021; Precinct 101: Tract 28.04: Block Group 1: Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1999; Block Group 2: Block 2006,

Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3011, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3030; Tract 28.05: Block Group 4: Block 4015, Block 4016, Block 4019; Precinct 111: Tract 29.01: Block Group 2: Block 2021, Block 2025, Block 2026, Block 2027, Block 2028; Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 903, Precinct 904, Precinct 905, Precinct 907, Precinct 908: Tract 26.03: Block Group 3: Block 3001; Tract 26.04: Block Group 3: Block 3000, Block 3001, Block 3002; Precinct 909: Tract 26.04: Block Group 1: Block 1012, Block 1013, Block 1016, Block 1017, Block 1019; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2007, Block 2008, Block 2009, Block 2010, Block 2023, Block 2024, Block 2025.

District 73: Davidson County: Precinct Abbotts Creek, Precinct Gumtree, Precinct Wallburg; Forsyth County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 021, Precinct 042: Tract 35: Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019; Precinct 043: Tract 33.03: Block Group 3: Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039; Tract 34.01: Block Group 1: Block 1000, Block 1001, Block 1042, Block 1044, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1056, Block 1057, Block 1058; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Tract 34.02: Block Group 1, Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 112: Tract 31.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1013, Block 1052, Block 1053, Block 1054; Precinct 507: Tract 33.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3040, Block 3041.

District 74: Forsyth County: Precinct 031: Tract 28.07: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3012, Block 3013, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027; Precinct 032: Tract 28.05: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1025, Block 1026, Block 1027, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1082, Block 1083, Block 1084, Block 1085, Block

1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block 1100; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3052, Block 3053, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3064, Block 3065, Block 3066, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3080, Block 3995, Block 3996, Block 3997, Block 3998, Block 3999; Block Group 4: Block 4003; Precinct 033: Tract 29.01: Block Group 2: Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013; Precinct 034, Precinct 082: Tract 30.01: Block Group 1: Block 1002, Block 1003, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1051, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092; Block Group 2: Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082; Block Group 3: Block 3009, Block 3010, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3077, Block 3089, Block 3090, Block 3091; Tract 30.02: Block Group 2: Block 2000, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2030, Block 2031; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3015, Block 3016, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3997, Block 3998, Block 3999; Precinct 083: Tract 29.02: Block Group 1: Block 1000, Block 1001, Block 1011, Block 1012, Block 1013, Block 1014, Block 1088, Block 1089; Tract 30.02: Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3017, Block 3018, Block 3019, Block 3020; Precinct 091, Precinct 092, Precinct 101: Tract 28.01: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3061, Block 3062, Block 3063; Tract 28.04: Block Group 3: Block 3028, Block 3029; Tract 28.05: Block Group 3: Block 3063; Block Group 4: Block 4013, Block 4014; Precinct 111: Tract 28.07: Block Group 2: Block 2000, Block 2001, Block 2029, Block 2030, Block 2038; Tract 29.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2007, Block 2008, Block 2019, Block 2020; Tract 29.02: Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5034, Block 5999; Block Group 6:

Block 6005, Block 6006, Block 6007, Block 6008; Precinct 112: Tract 29.02: Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5032, Block 5033, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014; Tract 31.01: Block Group 1: Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068; Block Group 2: Block 2023, Block 2024, Block 2026, Block 2027, Block 2028, Block 2029, Block 2061, Block 2062, Block 2064, Block 2993; Precinct 131, Precinct 132, Precinct 133: Tract 39.07: Block Group 2: Block 2008; Tract 40.08: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008; Tract 41.02: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1018, Block 1019, Block 1021, Block 1022, Block 1023, Block 1024, Block 1997, Block 1998; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2999; Precinct 601: Tract 10: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2003, Block 2005, Block 2006; Block Group 4: Block 4000; Precinct 604: Tract 10: Block Group 2: Block 2007, Block 2008; Block Group 4: Block 4003, Block 4004, Block 4011; Precinct 701, Precinct 702, Precinct 703, Precinct 706, Precinct 707, Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 809, Precinct 901, Precinct 902: Tract 1: Block Group 1: Block 1035, Block 1036, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1087, Block 1088, Block 1089; Tract 11: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1016, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2023, Block 2024; Block Group 3: Block 3010, Block 3011; Precinct 906, Precinct 908: Tract 26.04: Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3997, Block 3998, Block 3999; Precinct 909: Tract 26.04: Block Group 1: Block 1014, Block 1015, Block 1018; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031.

District 75: Forsyth County: Precinct 042: Tract 35: Block Group 4: Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035; Tract 36: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025,

Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3999; Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 122: Tract 37: Block Group 2: Block 2041, Block 2042, Block 2043; Block Group 4: Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4038, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081, Block 4082, Block 4085, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4093, Block 4094, Block 4095, Block 4096, Block 4097, Block 4098, Block 4099, Block 4100, Block 4101, Block 4102, Block 4103, Block 4104, Block 4105, Block 4106, Block 4107, Block 4108, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4121, Block 4997, Block 4998, Block 4999; Tract 38.03: Block Group 2: Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Precinct 123, Precinct 133: Tract 40.08: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1016, Block 1017, Block 1018; Block Group 2: Block 2009, Block 2010, Block 2011; Tract 40.09: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1019, Block 1028, Block 1999; Block Group 2; Tract 41.02: Block Group 2: Block 2012, Block 2998; Precinct 506: Tract 36: Block Group 1: Block 1013; Block Group 3: Block 3004, Block 3005, Block 3013, Block 3014; Precinct 602: Tract 37: Block Group 2: Block 2023, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040; Block Group 3; Tract 38.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2022, Block 2023, Block 2024, Block 2027, Block 2028; Precinct 605: Tract 36: Block Group 3: Block 3006, Block 3010, Block 3011, Block 3012, Block 3038; Precinct 607, Precinct 704: Tract 21: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010; Tract 22: Block Group 4: Block 4014, Block 4015, Block 4018, Block 4019; Precinct 705, Precinct 708, Precinct 709, Precinct 807, Precinct 808.

District 76: Rowan County: Precinct Barnhardt Mill, Precinct Blackwelder Park, Precinct Bostian Cross Road, Precinct Bostian School, Precinct China Grove North, Precinct China Grove South, Precinct Enochville East, Precinct Enochville West, Precinct Faith, Precinct Gold Knob, Precinct Granite Quarry North, Precinct Granite Quarry South, Precinct Hatters Shop, Precinct Kannapolis East, Precinct Kannapolis West, Precinct Landis East, Precinct

Landis West, Precinct Morgan 1, Precinct Morgan 2, Precinct Rock Grove, Precinct Rockwell, Precinct Sumner: Tract 502.02: Block Group 2: Block 2033, Block 2034, Block 2035, Block 2036, Block 2066; Tract 511.02: Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2003, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2014, Block 2015, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Tract 512.03: Block Group 1: Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1033; Block Group 2: Block 2000, Block 2001, Block 2004, Block 2014, Block 2015, Block 2016, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Tract 512.04: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2024, Block 2027, Block 2028; Precinct Trading Ford.

District 77: Rowan County: Precinct Bradshaw, Precinct Cleveland, Precinct Ellis, Precinct Franklin, Precinct Innes West, Precinct Locke North, Precinct Locke South, Precinct Milford Hills City, Precinct Milford Hills County, Precinct Mt. Ulla, Precinct Scotch Irish, Precinct Spencer, Precinct Spencer East, Precinct Steele, Precinct Sumner: Tract 511.02: Block Group 2: Block 2012, Block 2013, Block 2016; Tract 512.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1030, Block 1031, Block 1032, Block 1034, Block 1035; Block Group 2: Block 2002, Block 2003, Block 2017; Tract 512.04: Block Group 1: Block 1013, Block 1023, Block 1024, Block 1040; Block Group 2: Block 2000, Block 2016, Block 2017, Block 2018, Block 2019, Block 2023; Precinct Unity, Precinct Ward 1 East, Precinct Ward 1 North, Precinct Ward 1 West, Precinct Ward 2 East, Precinct Ward 2 North, Precinct Ward 2 West, Precinct Ward 3 West, Precinct Ward South.

District 78: Randolph County: Precinct Asheboro Loflin, Precinct Asheboro Mccrary, Precinct Asheboro North 1, Precinct Asheboro Southpointe, Precinct Asheboro Westside, Precinct Back Creek, Precinct Brower, Precinct Cedar Grove East, Precinct Cedar Grove West, Precinct Coleridge, Precinct Concord, Precinct Grant, Precinct New Hope, Precinct Pleasant Grove, Precinct Prospect, Precinct Richland, Precinct Tabernacle, Precinct Trinity East, Precinct Trinity Tabernacle, Precinct Trinity West, Precinct Union.

District 79: Davie County, Iredell County: Precinct Bethany: Tract 607: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2026, Block 2991, Block 2993, Block 2994, Block 2997, Block 2998; Tract 610: Block Group 2: Block 2000; Block Group 3: Block 3008, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3019; Block Group 4: Block 4014, Block 4111, Block 4112; Precinct Chambersburg, Precinct Cool Springs, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 6: Tract 601: Block Group 4: Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4033, Block 4034; Tract 602: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1018, Block 1020; Block Group 2; Tract 603: Block Group 1: Block 1011; Block Group 2: Block 2000, Block 2007, Block 2008, Block 2030; Block Group 3: Block 3028; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4028, Block 4029; Tract 606: Block Group 3: Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060; Block Group 4: Block 4008, Block 4009, Block 4011, Block 4012,

Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4048, Block 4049, Block 4053, Block 4997; Tract 612: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3027, Block 3028, Block 3029, Block 3033; Tract 613: Block Group 3: Block 3013, Block 3014, Block 3015, Block 3016; Precinct Turnersburg.

District 80: Davidson County: Precinct Arcadia, Precinct Denton, Precinct Emmons, Precinct Healing Springs, Precinct Holly Grove, Precinct Lexington 3, Precinct Liberty, Precinct Midway, Precinct North Davidson, Precinct Reeds Yadkin College, Precinct Reedy Creek, Precinct Silver Valley, Precinct South Davidson, Precinct Thomasville 01, Precinct Thomasville 05: Tract 607: Block Group 1: Block 1031; Tract 610: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Block Group 3: Block 3019, Block 3020, Block 3021, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Tract 611: Block Group 1: Block 1000, Block 1005; Block Group 2: Block 2001, Block 2002, Block 2004, Block 2005; Precinct Thomasville 08, Precinct Thomasville 09, Precinct Thomasville 10, Precinct Welcome, Precinct West Arcadia.

District 81: Davidson County: Precinct Boone, Precinct Central, Precinct Cotton Grove, Precinct Lexington 1, Precinct Lexington 2, Precinct Lexington 4, Precinct Silver Hill, Precinct Southmont, Precinct Thomasville 02, Precinct Thomasville 03, Precinct Thomasville 04, Precinct Thomasville 05: Tract 607: Block Group 1: Block 1032; Tract 610: Block Group 2: Block 2019, Block 2020, Block 2021; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3017, Block 3018, Block 3022, Block 3023, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059; Precinct Thomasville 07, Precinct Tyro, Precinct Ward 1, Precinct Ward 2, Precinct Ward 3, Precinct Ward 4, Precinct Ward 5, Precinct Ward 6.

District 82: Cabarrus County: Precinct 01-03, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 02-07, Precinct 03-00, Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-05, Precinct 12-06, Precinct 12-07, Precinct 12-08, Precinct 12-09, Precinct 12-10, Precinct 12-11, Precinct 12-12.

District 83: Cabarrus County: Precinct 01-01, Precinct 01-02, Precinct 01-04, Precinct 04-01, Precinct 04-02, Precinct 04-03, Precinct 04-04, Precinct 04-05, Precinct 04-06, Precinct 04-07, Precinct 04-08, Precinct 04-09, Precinct 04-10, Precinct 05-00, Precinct 06-00, Precinct 07-00, Precinct 08-00, Precinct 09-00, Precinct 10-00, Precinct 11-01, Precinct 11-02.

District 84: Avery County, Caldwell County: Precinct Gamewell 1, Precinct Gamewell 2, Precinct Globe/Johns River, Precinct Lenoir 4: Tract 302: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2013, Block 2014, Block 2015, Block 2016,

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District 85: Burke County: Precinct Icard 2, Precinct Icard 3, Precinct Icard 4: Tract 210: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2047, Block 2049, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2066, Block 2067, Block 2068, Block 2069, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006; Tract 212.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041; Block Group 2: Block 2002, Block 2003; Precinct Icard 5, Precinct Lower Fork, Precinct Morganton 07: Tract 213.01: Block Group 1: Block 1009, Block 1010; Block Group 3: Block 3018, Block 3019, Block 3021; Tract 213.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1025, Block 1026; Block Group 2: Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2024; Precinct Silver Creek 2, Precinct Silver Creek 3, Precinct Upper Fork; McDowell County.

District 86: Burke County: Precinct Drexel 1, Precinct Drexel 3, Precinct Icard 1, Precinct Icard 4: Tract 210: Block Group 2: Block 2042, Block 2043, Block 2044, Block 2048, Block 2050, Block 2063, Block 2064, Block 2065, Block 2070, Block 2071; Precinct Jonas Ridge, Precinct Linville 1, Precinct Linville 2, Precinct Lovelady 1, Precinct Lovelady 2, Precinct Lovelady 4, Precinct Lower Creek, Precinct Morganton 01, Precinct Morganton 04, Precinct Morganton 05, Precinct Morganton 06, Precinct Morganton 07: Tract 203.02: Block Group 1:

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District 87: Caldwell County: Precinct Hudson 1, Precinct Hudson 2, Precinct Kings Creek, Precinct Lenoir 1, Precinct Lenoir 2, Precinct Lenoir 3, Precinct Lenoir 4: Tract 302: Block Group 2: Block 2000, Block 2001, Block 2010, Block 2011, Block 2012, Block 2024, Block 2026; Precinct Little River, Precinct Lovelady 1, Precinct Lovelady 2, Precinct Lovelady-Rhodhiss, Precinct Lower Creek 1, Precinct Lower Creek 2, Precinct Lower Creek 3, Precinct Lower Creek 4, Precinct North Catawba 1, Precinct North Catawba 2: Tract 303: Block Group 3: Block 3013, Block 3016, Block 3021, Block 3024, Block 3025, Block 3026, Block 3027; Tract 307: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Block Group 5: Block 5001; Tract 308: Block Group 2: Block 2000, Block 2001, Block 2005; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3015, Block 3016, Block 3017, Block 3018; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005; Precinct Patterson, Precinct Sawmills 1, Precinct Sawmills 2, Precinct Yadkin Valley.

District 88: Alexander County, Catawba County: Precinct College Park, Precinct Falling Creek, Precinct Greenmont, Precinct Highland, Precinct Kenworth, Precinct Northwest, Precinct Oakland Heights, Precinct Oakwood, Precinct Ridgeview, Precinct Sweetwater: Tract 109: Block Group 2: Block 2000, Block 2025, Block 2026, Block 2027, Block 2028, Block 2030, Block 2031, Block 2032, Block 2033; Tract 110: Block Group 2: Block 2018, Block 2024, Block 2025, Block 2026, Block 2028, Block 2029, Block 2030, Block 2031; Block Group 4: Block 4018, Block 4019, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038; Tract 111.02: Block Group 1: Block 1000, Block 1001, Block 1002; Block Group 3: Block 3001, Block 3002, Block 3003, Block 3004; Precinct Viewmont 1, Precinct Viewmont 2.

District 89: Catawba County: Precinct Balls Creek, Precinct Catawba, Precinct Claremont, Precinct Lake Norman, Precinct Maiden, Precinct Maiden East, Precinct Monogram, Precinct Mount Olive, Precinct Newton South, Precinct Oxford, Precinct Sherrills Ford, Precinct Startown: Tract 117.01: Block Group 2: Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060; Tract 117.02: Block Group 1: Block 1017, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group

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District 90: Alleghany County, Surry County: Precinct Bryan, Precinct Dobson 1, Precinct Dobson 2, Precinct Dobson 3, Precinct Elkin 1, Precinct Elkin 2, Precinct Elkin 3, Precinct Franklin, Precinct Marsh, Precinct Mt Airy 1, Precinct Mt Airy 2, Precinct Mt Airy 3, Precinct Mt Airy 4, Precinct Mt Airy 5, Precinct Mt Airy 7, Precinct Mt Airy 8, Precinct Mt Airy 9, Precinct Rockford, Precinct Stewarts Creek 1, Precinct Stewarts Creek 2.

District 91: Rockingham County: Precinct Dan Valley, Precinct Hogans, Precinct Huntsville, Precinct Ironworks: Tract 416: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3010, Block 3011, Block 3016, Block 3017, Block 3018, Block 3019, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3991, Block 3994, Block 3995, Block 3996, Block 3997, Block 3998; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4999; Block Group 5: Block 5009, Block 5010, Block 5020; Precinct Madison 1, Precinct Madison 2, Precinct Martins, Precinct Mayodan, Precinct New Bethel, Precinct Simpsonville: Tract 416: Block Group 1: Block 1038; Block Group 2: Block 2017, Block 2028, Block 2034, Block 2035, Block 2997; Block Group 5: Block 5000, Block 5008; Stokes County.

District 92: Iredell County: Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Union Grove; Surry County: Precinct Eldora, Precinct Longhill, Precinct Mt Airy 6, Precinct Pilot 1, Precinct Pilot 2, Precinct Shoals, Precinct Siloam, Precinct Westfield North, Precinct Westfield South; Yadkin County.

District 93: Ashe County, Watauga County.

District 94: Wilkes County.

District 95: Iredell County: Precinct Barringer, Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4, Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown: Tract 612: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032; Block Group 3: Block 3037, Block 3040, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053; Block Group 4: Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4027, Block 4028,

Block 4030, Block 4031, Block 4032; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5020, Block 5021, Block 5022, Block 5023, Block 5030, Block 5031, Block 5999; Block Group 6, Block Group 7, Block Group 8: Block 8000, Block 8001, Block 8002, Block 8003, Block 8004, Block 8005, Block 8006, Block 8007, Block 8009, Block 8010, Block 8048, Block 8049, Block 8053, Block 8054, Block 8996, Block 8999; Block Group 9: Block 9002, Block 9003, Block 9004, Block 9005, Block 9006, Block 9007, Block 9008, Block 9009, Block 9010, Block 9011; Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6: Tract 603: Block Group 2: Block 2012, Block 2013, Block 2014, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2031; Block Group 3: Block 3027, Block 3029; Block Group 4: Block 4004, Block 4005, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027; Tract 612: Block Group 2: Block 2000, Block 2001, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2999; Block Group 3: Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3998, Block 3999.

District 96: Catawba County: Precinct Banoak, Precinct Blackburn, Precinct Brookford, Precinct Conover East, Precinct Conover West, Precinct Longview North, Precinct Longview South, Precinct Mountain View 1, Precinct Mountain View 2, Precinct Newton East, Precinct Newton North, Precinct Newton West, Precinct Sandy Ridge, Precinct Springs, Precinct St Stephens 1, Precinct St Stephens 2, Precinct Startown: Tract 111.02: Block Group 2: Block 2084, Block 2085; Block Group 3: Block 3039, Block 3040; Tract 117.01: Block Group 1: Block 1049, Block 1050, Block 1051, Block 1052; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045; Tract 117.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1018, Block 1019; Precinct Sweetwater: Tract 110: Block Group 3: Block 3002, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3032, Block 3033, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4020, Block 4021, Block 4022, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4070, Block 4071, Block 4072, Block 4073, Block 4074, Block 4075, Block 4076, Block 4077, Block 4078, Block 4079, Block 4080, Block 4081,

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District 97: Lincoln County.

District 98: Mecklenburg County: Precinct 127, Precinct 128, Precinct 133, Precinct 134: Tract 62.07: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2015, Block 2016; Precinct 142, Precinct 143, Precinct 145, Precinct 202, Precinct 206, Precinct 207: Tract 62.06: Block Group 1: Block 1034, Block 1035, Block 1046, Block 1047; Tract 63.01: Block Group 1: Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1025, Block 1027, Block 1028, Block 1029, Block 1030; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007; Precinct 208, Precinct 209: Tract 61.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1069, Block 1996, Block 1997, Block 1998, Block 1999; Tract 62.07: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1989, Block 1990, Block 1991, Block 1992, Block 1993, Block 1994, Block 1995, Block 1996, Block 1997; Block Group 2: Block 2017, Block 2018, Block 2019, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074; Precinct 211: Tract 61.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1011, Block 1062, Block 1063; Precinct 214, Precinct 223: Tract 60.03: Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2028, Block 2029, Block 2050, Block 2051, Block 2997, Block 2998, Block 2999; Tract 61.01: Block Group 1: Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1994, Block 1995; Precinct 238, Precinct 239, Precinct 240, Precinct 241: Tract 63.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004,

Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1999; Precinct 242.

District 99: Mecklenburg County: Precinct 004, Precinct 082: Tract 53.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007; Block Group 3; Precinct 104, Precinct 105, Precinct 107, Precinct 123, Precinct 126, Precinct 132: Tract 15.05: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034; Precinct 134: Tract 62.06: Block Group 1: Block 1048, Block 1049; Tract 62.07: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2077, Block 2078, Block 2079; Block Group 3: Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3041; Precinct 135: Tract 54.02: Block Group 1: Block 1000, Block 1001, Block 1002; Tract 55.04: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1032, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1999; Tract 61.02: Block Group 1: Block 1000, Block 1001, Block 1002; Precinct 141, Precinct 204, Precinct 205, Precinct 207: Tract 63.01: Block Group 2: Block 2013, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027; Block Group 3: Block 3008, Block 3009; Precinct 209: Tract 62.07: Block Group 3: Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3048; Precinct 211: Tract 55.03: Block Group 1: Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066; Tract 61.02: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032; Precinct 212, Precinct 237, Precinct 241: Tract 62.07: Block Group 2: Block 2000, Block 2001, Block 2075, Block 2076, Block 2080, Block 2081; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Tract 63.02: Block Group 1: Block 1019; Block Group 2.

District 100: Mecklenburg County: Precinct 005, Precinct 006, Precinct 007, Precinct 033, Precinct 034, Precinct 045, Precinct 062, Precinct 063, Precinct 064, Precinct 066: Tract 20.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1008; Precinct 084, Precinct 085, Precinct 095, Precinct 096, Precinct 099, Precinct 106: Tract 20.03: Block Group 1: Block 1000, Block 1002, Block 1008, Block 1014, Block 1015; Precinct 108, Precinct 117, Precinct 124, Precinct 125, Precinct 130, Precinct 217: Tract 30.15: Block Group 3: Block 3000, Block 3001, Block 3007; Tract 58.12: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1005, Block 1011, Block 1012.

District 101: Mecklenburg County: Precinct 011, Precinct 012, Precinct 026, Precinct 027, Precinct 042: Tract 53.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1005, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014; Precinct 053: Tract 40: Block Group 5: Block 5000, Block 5001; Tract 59.01: Block Group 2: Block 2025, Block 2027; Precinct 054, Precinct 055, Precinct 056, Precinct 079, Precinct 080, Precinct 081, Precinct 089, Precinct 135: Tract 55.04: Block Group 1: Block 1073; Tract 61.02: Block Group 1: Block 1003, Block 1013, Block 1014, Block 1015; Precinct 200: Tract 59.01: Block Group 2: Block 2012, Block 2013, Block 2030, Block 2031, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3036, Block 3037, Block 3038, Block 3995, Block 3996, Block 3997, Block 3999; Precinct 210, Precinct 211: Tract 61.02: Block Group 3: Block 3021, Block 3022, Block 3040; Precinct 213, Precinct 222, Precinct 223: Tract 60.03: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Block Group 2: Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2996; Tract 61.01: Block Group 2: Block 2005; Precinct 224.

District 102: Mecklenburg County: Precinct 001, Precinct 002, Precinct 003, Precinct 013, Precinct 014, Precinct 015, Precinct 017, Precinct 028, Precinct 029, Precinct 030, Precinct 035: Tract 22: Block Group 1, Block Group 2: Block 2000, Block 2001; Precinct 042: Tract 53.03: Block Group 1: Block 1003, Block 1004, Block 1006; Block Group 2, Block Group 3: Block 3001, Block 3002, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Block Group 4: Block 4002, Block 4003, Block 4004, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011; Block Group 5: Block 5012; Precinct 043, Precinct 044, Precinct 046, Precinct 060, Precinct 061, Precinct 082: Tract 53.03: Block Group 3: Block 3000, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009; Block Group 4: Block 4000, Block 4001, Block 4005, Block 4006; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5013; Tract 53.04: Block Group 1: Block 1008; Block Group 2; Precinct 109, Precinct 132: Tract 15.05: Block Group 1: Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029; Tract 53.03: Block Group 6: Block 6000, Block 6001.

District 103: Mecklenburg County: Precinct 083, Precinct 094, Precinct 102, Precinct 115, Precinct 116, Precinct 136, Precinct 201, Precinct 203, Precinct 215, Precinct 216, Precinct 217: Tract 58.12: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1016, Block 1017; Block Group 2: Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038; Tract 58.13: Block Group 1: Block 1000, Block 1001, Block 1002; Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 233, Precinct 234, Precinct 235, Precinct 236.

District 104: Mecklenburg County: Precinct 008: Tract 27: Block Group 4: Block 4007, Block 4008, Block 4009; Block Group 5: Block 5013, Block 5014; Precinct 019, Precinct 035: Tract 22: Block Group 2: Block 2002, Block 2004, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011; Precinct 036, Precinct 047: Tract 20.02: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012; Tract 22: Block Group 3; Precinct 048, Precinct 049, Precinct 057, Precinct 065, Precinct 066: Tract 20.02: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Precinct 067, Precinct 068, Precinct 069: Tract 30.13: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1019, Block 1020, Block 1021, Block 1022; Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 086, Precinct 092, Precinct 093, Precinct 101, Precinct 106: Tract 20.03: Block Group 1: Block 1001, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Precinct 110, Precinct 111, Precinct 114, Precinct 119, Precinct 129: Tract 58.07: Block Group 4: Block 4009, Block 4011, Block 4012, Block 4013, Block 4014, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026.

District 105: Mecklenburg County: Precinct 069: Tract 30.13: Block Group 1: Block 1000, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1023, Block 1024; Block Group 2; Precinct 087: Tract 58.06: Block Group 5: Block 5009, Block 5010, Block 5011; Block Group 6: Block 6000, Block 6005, Block 6006; Tract 58.08: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005; Block Group 2; Precinct 088, Precinct 090, Precinct 091, Precinct 100, Precinct 103, Precinct 112, Precinct 113, Precinct 118, Precinct 121, Precinct 131, Precinct 137, Precinct 139, Precinct 140, Precinct 144, Precinct 226, Precinct 227, Precinct 231: Tract 58.18: Block Group 2: Block 2009, Block 2010, Block 2011, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Precinct 232.

District 106: Mecklenburg County: Precinct 008: Tract 27: Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3015; Block Group 4: Block 4000, Block 4005, Block 4006; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011; Precinct 009, Precinct 010, Precinct 018, Precinct 020, Precinct 021, Precinct 032, Precinct 037, Precinct 038, Precinct 047: Tract 22: Block Group 4; Precinct 050, Precinct 051, Precinct 052, Precinct 058, Precinct 059, Precinct 078, Precinct 098, Precinct 120, Precinct 138, Precinct 77, Precinct 97.

District 107: Mecklenburg County: Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 053: Tract 40: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Block Group 4, Block Group 5: Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021; Tract 43.01: Block Group 3: Block 3021, Block 3022; Block Group 4; Precinct 087: Tract 58.06: Block Group 4: Block 4002, Block

4003, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5012; Block Group 6: Block 6001, Block 6002, Block 6003, Block 6004; Precinct 122, Precinct 129: Tract 58.06: Block Group 4: Block 4000, Block 4001, Block 4004, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019; Block Group 5: Block 5013; Tract 58.07: Block Group 1: Block 1015, Block 1016, Block 1017; Block Group 3: Block 3005, Block 3006, Block 3007, Block 3009, Block 3010; Block Group 4: Block 4007, Block 4008, Block 4010, Block 4015, Block 4016, Block 4017, Block 4027, Block 4028, Block 4029; Precinct 200: Tract 59.01: Block Group 3: Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3993, Block 3994, Block 3998; Block Group 4; Precinct 225, Precinct 228, Precinct 229, Precinct 230, Precinct 231: Tract 58.06: Block Group 3; Tract 58.18: Block Group 2: Block 2012, Block 2013, Block 2014; Precinct 243.

District 108: Gaston County: Precinct Ashbrook, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Cramerton, Precinct Flint Grove: Tract 313.01: Block Group 1: Block 1023, Block 1024; Tract 313.02: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025; Tract 314: Block Group 1: Block 1007; Block Group 3: Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4016, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4029, Block 4030; Tract 321: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3033, Block 3034; Precinct Gardner Park, Precinct Grier, Precinct Lowell, Precinct Lucia, Precinct Mcadenville, Precinct Mt Holly 1, Precinct Mt Holly 2, Precinct New Hope: Tract 322: Block Group 3: Block 3010, Block 3011; Tract 325.04: Block Group 3: Block 3017, Block 3025, Block 3026, Block 3028, Block 3029; Precinct Ranlo, Precinct Sherwood, Precinct Southpoint: Tract 324: Block Group 4: Block 4000, Block 4001, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4996, Block 4997; Block Group 5: Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5999; Block Group 6: Block 6010, Block 6011, Block 6012, Block 6013, Block 6016, Block 6017, Block 6018, Block 6020, Block 6022; Precinct Stanley 1, Precinct Stanley 2.

District 109: Gaston County: Precinct Armstrong, Precinct Crowders Mountain, Precinct Forest Heights, Precinct Gaston Day, Precinct Health Center, Precinct Highland, Precinct Myrtle, Precinct New Hope: Tract 325.02, Tract 325.04: Block Group 1: Block 1003; Block Group 3: Block 3010, Block 3013, Block 3015, Block 3016, Block 3027, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3995; Precinct Pleasant Ridge, Precinct Robinson 1, Precinct Robinson 2, Precinct South Gastonia, Precinct Southpoint: Tract 324: Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6014, Block 6015, Block 6019, Block 6021, Block 6023, Block

6024, Block 6025, Block 6026, Block 6027, Block 6028, Block 6029, Block 6030, Block 6031, Block 6032, Block 6033, Block 6034, Block 6035, Block 6036, Block 6997, Block 6998, Block 6999; Precinct Union, Precinct Victory, Precinct York Chester.

District 110: Cleveland County: Precinct Casar, Precinct Fallston, Precinct Lawndale, Precinct Mulls, Precinct Oak Grove: Tract 9503: Block Group 3: Block 3000, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3028, Block 3029, Block 3030; Block Group 4: Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4011; Block Group 5: Block 5005, Block 5006, Block 5007, Block 5018; Block Group 6: Block 6000, Block 6001, Block 6002, Block 6003, Block 6004, Block 6005, Block 6006, Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6016, Block 6018, Block 6019; Precinct Polkville, Precinct Waco; Gaston County: Precinct Alexis, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3, Precinct Dallas 1, Precinct Dallas 2, Precinct Flint Grove: Tract 314: Block Group 2: Block 2000, Block 2001, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Block Group 5: Block 5006, Block 5007, Block 5009, Block 5010, Block 5011, Block 5012; Precinct High Shoals, Precinct Landers Chapel, Precinct Tryon, Precinct Wood Hill.

District 111: Cleveland County: Precinct Bethware, Precinct Boiling Springs, Precinct Grover, Precinct Holly Springs, Precinct Kings Mountain 1, Precinct Kings Mountain 2, Precinct Kings Mountain 3, Precinct Kings Mountain 4, Precinct Oak Grove: Tract 9503: Block Group 5: Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Block Group 6: Block 6014, Block 6015, Block 6017; Tract 9506: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009; Precinct Rippy, Precinct Shanghai, Precinct Shelby 1, Precinct Shelby 2, Precinct Shelby 3, Precinct Shelby 4, Precinct Shelby 5, Precinct Shelby 6, Precinct Shelby 7, Precinct Shelby 8.

District 112: Cleveland County: Precinct Kingstown, Precinct Lattimore, Precinct Mooresboro-Young; Rutherford County.

District 113: Henderson County: Precinct Armory, Precinct Atkinson, Precinct Crab Creek, Precinct East Flat Rock, Precinct Etowah South, Precinct Flat Rock, Precinct Green River, Precinct Raven Rock; Polk County, Transylvania County.

District 114: Buncombe County: Precinct Asheville 02, Precinct Asheville 03, Precinct Asheville 04, Precinct Asheville 11, Precinct Asheville 12, Precinct Asheville 13, Precinct Asheville 14: Tract 2: Block Group 2: Block 2999; Tract 3: Block Group 1: Block 1994, Block 1995, Block 1996; Tract 9: Block Group 4: Block 4999; Tract 10: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1025, Block 1026, Block 1027, Block 1999; Tract 11: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026; Tract 12: Block Group 1: Block 1000, Block 1001; Tract 13: Block Group 1: Block 1000, Block 1001; Tract 14: Block Group 1: Block 1002, Block 1003, Block 1009, Block 1011, Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1999; Block Group 2, Block

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District 115: Buncombe County: Precinct Asheville 01, Precinct Asheville 06, Precinct Asheville 07, Precinct Asheville 08, Precinct Asheville 09, Precinct Asheville 10, Precinct Asheville 17, Precinct Asheville 20, Precinct Asheville 21, Precinct Asheville 23, Precinct Asheville 25, Precinct Asheville 29: Tract 22.02: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018; Precinct Black Mountain 1, Precinct Black Mountain 2, Precinct Black Mountain 3, Precinct Black Mountain 4, Precinct Black Mountain 5, Precinct Broad River, Precinct Fairview 1, Precinct Fairview 2, Precinct Limestone 4: Tract 21.02: Block Group 1: Block 1031; Block Group 2: Block 2043; Tract 22.02: Block Group 1: Block 1001, Block 1002, Block 1005, Block 1006, Block 1009, Block 1010, Block 1019, Block 1020, Block 1021; Tract 32: Block Group 1: Block 1030, Block 1031, Block 1032; Block Group 2: Block 2019, Block 2020, Block 2023, Block 2024, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2039, Block 2041, Block 2043; Block Group 3: Block 3011; Precinct Reynolds, Precinct Riceville 1 & Swannanoa 2, Precinct Riceville 2 & Swannanoa 3, Precinct Swannanoa 1.

District 116: Buncombe County: Precinct Asheville 05, Precinct Asheville 14: Tract 14: Block Group 5: Block 5002, Block 5006, Block 5007, Block 5008, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021; Precinct Asheville 18, Precinct Asheville 19, Precinct Asheville 24, Precinct Asheville 29: Tract 22.02: Block Group 2: Block 2009, Block 2010, Block 2011; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013; Precinct Averys Creek, Precinct Biltmore, Precinct Hazel 1, Precinct Hazel 2, Precinct Limestone 1, Precinct Limestone 2, Precinct Limestone 3, Precinct Limestone 4: Tract 22.02: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025; Tract 32: Block Group 3: Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043; Precinct Lower Hominy 1, Precinct Lower Hominy 2, Precinct Lower Hominy 3, Precinct Upper Hominy 1 & 3, Precinct Upper Hominy 2, Precinct West Buncombe 1: Tract 14: Block Group 5: Block 5005; Tract 26.02: Block Group 2: Block 2000, Block 2027, Block 2028; Block Group 3: Block 3000, Block 3001, Block 3002; Block Group 6: Block 6007, Block 6008, Block 6009, Block 6010, Block 6011, Block 6012, Block 6013, Block 6014, Block 6015, Block 6016, Block 6017, Block 6018; Block Group 7: Block 7000, Block 7001, Block 7003, Block 7004, Block 7005, Block 7006, Block 7010, Block 7017, Block 7999; Precinct West Buncombe 2, Precinct Woodfin.

District 117: Henderson County: Precinct Bat Cave, Precinct Blue Ridge North, Precinct Blue Ridge South, Precinct Brickton, Precinct Clear Creek, Precinct Edneyville, Precinct Etowah Valley, Precinct Fletcher, Precinct Grimesdale, Precinct Hendersonville 1, Precinct Hendersonville 2, Precinct Hendersonville 3, Precinct Hoopers Creek, Precinct Horse Shoe, Precinct Laurel Park, Precinct Long John Mountain, Precinct Mills River North, Precinct Mills River South, Precinct Moores Grove, Precinct Northeast, Precinct Northwest, Precinct Park Ridge, Precinct Pisgah View, Precinct Rugby, Precinct Southeast, Precinct Southwest.

District 118: Haywood County: Precinct Allens Creek: Tract 9808: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2024; Tract 9811: Block Group 2: Block 2023, Block 2054, Block 2055, Block 2056, Block 2074, Block 2075, Block 2076, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085; Tract 9812: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3044; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4017, Block 4018, Block 4023; Block Group 5: Block 5014, Block 5015, Block 5034, Block 5035, Block 5036, Block 5037; Precinct Beaverdam 1, Precinct Beaverdam 2, Precinct Beaverdam 3, Precinct Beaverdam 4, Precinct Beaverdam 5/6, Precinct Beaverdam 7, Precinct Big Creek, Precinct Clyde North, Precinct Clyde South, Precinct Crabtree, Precinct Fines Creek 1, Precinct Fines Creek 2, Precinct Hazelwood, Precinct Iron Duff, Precinct Ivy Hill: Tract 9801: Block Group 2: Block 2056, Block 2057, Block 2058; Tract 9806: Block Group 1: Block 1037, Block 1041, Block 1042, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086; Block Group 4: Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4066; Tract 9808: Block Group 1: Block 1003, Block 1010; Precinct Jonathan Creek, Precinct Lake Junaluska, Precinct Pigeon: Tract 9811: Block Group 2: Block 2009, Block 2010, Block 2013, Block 2014, Block 2015, Block 2016; Tract 9812: Block Group 5: Block 5000; Tract 9813: Block Group 1: Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1041; Block Group 2: Block 2019, Block 2020, Block 2037, Block 2039, Block 2040; Block Group 3: Block 3015, Block 3016, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3041, Block 3042, Block 3058, Block 3059, Block 3060, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3092, Block 3093, Block 3094, Block 3095, Block 3096, Block 3097, Block 3098, Block 3099, Block 3100; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4036, Block 4037, Block 4038, Block 4039, Block 4048, Block 4049, Block 4050; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005; Precinct Pigeon Center, Precinct Waynesville Center, Precinct Waynesville East, Precinct Waynesville South 1: Tract 9808:

Block Group 1: Block 1011, Block 1013, Block 1025, Block 1026, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1042, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075; Block Group 2: Block 2002; Tract 9809: Block Group 1: Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037; Tract 9811: Block Group 1: Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1035, Block 1036, Block 1037, Block 1038, Block 1040, Block 1041, Block 1042; Tract 9812: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006; Precinct Waynesville South 2, Precinct Waynesville West, Precinct White Oak; Madison County, Yancey County: Precinct Prices Creek: Tract 9604: Block Group 3: Block 3038, Block 3039, Block 3040, Block 3052, Block 3053, Block 3061, Block 3062, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3092, Block 3093.

District 119: Haywood County: Precinct Allens Creek: Tract 9811: Block Group 2: Block 2020, Block 2021, Block 2022, Block 2086, Block 2087; Tract 9812: Block Group 3: Block 3021, Block 3022, Block 3023, Block 3043; Block Group 4: Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4109, Block 4110, Block 4111, Block 4112, Block 4113, Block 4114, Block 4115, Block 4116, Block 4117, Block 4118, Block 4119, Block 4120, Block 4121, Block 4122, Block 4123, Block 4124, Block 4125, Block 4126, Block 4127, Block 4128, Block 4129, Block 4130, Block 4131, Block 4132, Block 4133, Block 4134, Block 4135; Block Group 5: Block 5001, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5032, Block 5033, Block 5038, Block 5039, Block 5040, Block 5041; Tract 9813: Block Group 4: Block 4057, Block 4058; Precinct Cecil, Precinct East Fork, Precinct Ivy Hill: Tract 9801: Block Group 2: Block 2053, Block 2054, Block 2055, Block 2059; Tract 9806: Block Group 4: Block 4038, Block 4039, Block 4040, Block 4041; Tract 9807: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1094, Block 1095, Block 1096, Block 1097, Block 1098, Block

1099, Block 1100, Block 1101, Block 1102, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1112, Block 1113, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1121, Block 1122, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1132, Block 1133, Block 1134, Block 1135, Block 1136, Block 1137, Block 1138, Block 1139, Block 1140, Block 1141, Block 1142, Block 1143, Block 1144, Block 1145, Block 1146, Block 1147, Block 1148, Block 1149, Block 1150, Block 1151, Block 1152, Block 1153, Block 1154, Block 1155, Block 1156, Block 1157, Block 1158, Block 1159, Block 1160, Block 1161, Block 1162, Block 1163, Block 1164, Block 1165, Block 1166, Block 1167, Block 1168, Block 1169, Block 1170; Block Group 2, Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076, Block 3077, Block 3078, Block 3079, Block 3080, Block 3081, Block 3082, Block 3083, Block 3084, Block 3085, Block 3086, Block 3087, Block 3088, Block 3089, Block 3090, Block 3091, Block 3092, Block 3093, Block 3094, Block 3095, Block 3096, Block 3097, Block 3098, Block 3099, Block 3100, Block 3101, Block 3102, Block 3103, Block 3104, Block 3105, Block 3106, Block 3107, Block 3108, Block 3109, Block 3110, Block 3111, Block 3112, Block 3113, Block 3114, Block 3115, Block 3116, Block 3117, Block 3118, Block 3119, Block 3120, Block 3121, Block 3122, Block 3123, Block 3124, Block 3125, Block 3126, Block 3127, Block 3128, Block 3134; Tract 9808: Block Group 1: Block 1014, Block 1019, Block 1021, Block 1083; Precinct Pigeon: Tract 9813: Block Group 1: Block 1038, Block 1039; Block Group 4: Block 4000, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4051, Block 4052, Block 4056, Block 4086, Block 4087, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4093, Block 4154, Block 4155, Block 4156, Block 4161; Block Group 5: Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017; Block Group 6: Block 6020, Block 6021, Block 6022, Block 6025, Block 6026; Precinct Saunook, Precinct Waynesville South 1: Tract 9807: Block Group 3: Block 3129, Block 3130, Block 3131, Block 3132; Tract 9808: Block Group 1: Block 1012, Block 1015, Block 1016, Block 1017, Block 1018, Block 1020, Block 1022, Block 1023, Block 1024, Block 1027, Block 1039, Block 1040, Block 1041, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082; Block Group 2: Block 2003, Block 2013, Block 2014; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005; Jackson County, Macon County: Precinct Cowee, Precinct Franklin North: Tract 9703: Block Group 1: Block 1014; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005; Block Group 6: Block 6027, Block 6028, Block 6029; Block Group 7: Block 7013, Block 7014, Block 7015, Block 7016, Block 7017, Block 7018, Block 7019, Block 7025, Block 7044, Block 7045, Block 7048, Block 7049, Block 7051, Block 7052, Block 7053, Block 7054, Block 7055, Block 7059, Block 7060, Block 7061, Block 7062, Block 7063, Block 7064, Block 7065, Block 7066, Block 7067, Block 7068,

Block 7069, Block 7070, Block 7071, Block 7072, Block 7073; Block Group 8: Block 8016, Block 8017, Block 8036, Block 8037, Block 8039, Block 8040, Block 8041, Block 8042, Block 8043, Block 8044, Block 8045, Block 8046; Precinct Iotla, Precinct Millshoal: Tract 9701: Block Group 2: Block 2024, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036; Block Group 3: Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3067, Block 3068, Block 3999; Tract 9703: Block Group 1: Block 1998; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3005, Block 3998, Block 3999; Tract 9704: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1048, Block 1049, Block 1050, Block 1051, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1075, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029; Swain County.

District 120: Cherokee County, Clay County, Graham County, Macon County: Precinct Burningtown, Precinct Cartoogechaye, Precinct Ellijay, Precinct Flats, Precinct Franklin East, Precinct Franklin North: Tract 9703: Block Group 2: Block 2000, Block 2001, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2027, Block 2028; Block Group 7: Block 7020, Block 7021, Block 7022, Block 7023, Block 7024, Block 7026, Block 7027, Block 7028, Block 7029, Block 7030, Block 7031, Block 7032, Block 7033, Block 7034, Block 7039, Block 7041, Block 7042, Block 7043, Block 7046, Block 7047, Block 7050, Block 7056, Block 7057, Block 7058; Precinct Franklin South, Precinct Highlands, Precinct Millshoal: Tract 9703: Block Group 3: Block 3004; Tract 9704: Block Group 1: Block 1052, Block 1053, Block 1074, Block 1076; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2028, Block 2029, Block 2031; Block Group 3: Block 3043; Precinct Nantahala, Precinct Smithbridge, Precinct Sugarfork, Precinct Union.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of October 20, 2003, to reflect precincts updated as outlined in subsection (c) of this section. However, the boundary corner between Forsyth, Stokes, and Rockingham Counties is as established by Chapter 23, Public Laws of 1848-49.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect with greater accuracy the precincts as they existed as of October 20, 2003, including changes made to precincts after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office

computer database from the TIGER Files in several counties. Those changes include actions by county boards of elections to divide, merge, and otherwise realign precincts. Where a realignment of precinct boundaries by a county board of elections is impossible to reflect in the database using Census geography, the Legislative Services Office modified the database by either merging two precincts or by approximating the boundary using Census geography. The following is a list, for informational purposes only, of precincts shown in the TIGER Files, the geography of which has been modified in the Legislative Services Office computer database:

(1) Anson County: All precincts except Burnsville, Peachland, and White Store.
(2) Buncombe County: Asheville 4, 15, 22, 19, Riceville Swannanoa 2 CRU, and Black Mountain 3.
(3) Cabarrus County: 0202 and 1209.
(4) Caldwell County: Lovelady 2.
(5) Carteret County: Cape Carteret, Cedar Point, Indian Beach, Salter Path, Newport 1, and Newport 2.
(6) Caswell County: Yanceyville 2 and Yanceyville 4.
(7) Chatham County: East Williams, North Williams, and West Williams.
(8) Craven County: Havelock.
(9) Cumberland County: Beaver Dam, Cedar Creek, Arran Hills, Cumberland 1, Hope Mills 1, and Stoney Point.
(10) Dare County: Manteo.
(11) Gates County: 1 and 5.
(12) Guilford County: Greensboro 40, North Clay, High Point 19, High Point 20, Center Grove 1, and Summerfield 3.
(13) Hertford County: Murfreesboro 2 and Murfreesboro 3.
(14) Iredell County: Coddle Creek 1 through 4 and Statesville 1 through 6.
(15) Johnston County: East Clayton, Pleasant Grove, and Wilders.
(16) Lee County: West Sanford 2.
(17) Lincoln County: North Brook I/II, Iron Station, Lowesville, Denver, Hickory Grove, Pumpkin Center, and Triangle.
(18) Mecklenburg County: 77, 97, 121, 122, 138, 140, 142, 143, 144, 202, 206, 225, 228, 239, 240, and 242.
(19) Moore County: Eureka and Knollwood.
(20) New Hanover County: Harnett 2 and 8.
(21) Onslow County: Voting Districts Not Defined.
(22) Orange County: Booker Creek, Cedar Falls, Dogwood Acres, and Frank Porter Graham.
(23) Pasquotank County: Precincts Mt. Hermon, Providence, 1A, 1B, 2A, 2B, 3A, 3B, and 4A.
(24) Robeson County: Fairmont 1 and 2 and Red Springs 1 and 2.
(25) Rowan County: Bostian Crossroads, Enochville, Franklin, and Granite Quarry.
(26) Union County: 22 and 33.
(27) Wake County: 01-22, 01-32, 01-43, 04-09, 04-11, 05-00, 07-02, 07-05, 07-06, 08-01, 08-03, 08-04, 09-02, 10-01, 10-02, 12-01, 12-02, 12-04, 13-02, 13-03, 15-01, 15-02, 16-01, 16-04, 17-01, 17-02, 17-05, 17-07, 18-02, 18-03, 19-02, 19-03, 19-04, 20-01, 20-03, 20-04, and 20-06.

The database is available for public inspection, and where it differs from the foregoing list, the database prevails.

In additional instances, precincts shown in the TIGER Files have not been changed geographically, but the names that appear in TIGER have been modified to correct misspellings, to standardize naming, or to reflect more closely the names used by county boards of elections and the State Board of Elections.

(d) If any precinct boundary is changed, that change shall not change the boundary of a house district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Code, s. 2845; Rev., c. 4399; 1911, c. 151; C.S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265; 1966, Ex. Sess., c. 5, s. 1; 1971, c. 483; 1981, c. 800; c. 1130, s. 1; 1982, Ex. Sess., c. 4; 1982, 2nd Ex. Sess., c. 1; 1984, Ex. Sess., c. 1, ss. 1, 2; c. 6, ss. 1-6; c. 7; 1991, c. 675, s. 1; 1991, Ex. Sess., c. 5, ss. 1, 2; 1993, c. 553, s. 34; 2001-459, s. 1; 2001-487, s. 77; 2002-1, Ex Sess., ss. 1, 2; 2002-2, Ex. Sess., s. 1; 2003-434, 1st Ex. Sess., ss. 1, 2.)

Editor's Note. —

The bracketed language in subsection (a) was probably inadvertently omitted when this section was amended, and has been re-inserted in brackets at the direction of the Revisor of Statutes.

Session Laws 2003-434, 1st Ex. Sess., s. 5.(a), provides: "If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(b), provides: "If the filing period or primary election or both for all offices are postponed under this section, the State Board of Elections may issue temporary orders pursuant to that postponement that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2004 primaries and general election for those offices. Those orders shall include a primary schedule and if necessary an altered schedule leading to the general election on November 2, 2004. The orders shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its orders, including a Revised Primary Timetable, to county boards of elections. Adoption of orders under this subsection is not subject to Chapter 150B of the General Statutes."

Session Laws 2003-434, s. 1st Ex. Sess., 5.(c), provides: "The State Board of Elections shall be governed by the following limitations:

"(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

"(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

"(3) The State Board shall set a filing period no shorter than 10 business days.

"(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(d), provides: "If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office at the next meeting of the board of education after the certification of the election."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(f), provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Effect of Amendments. —

Session Laws 2003-434, 1st Ex. Sess., ss. 1 and 2, effective November 25, 2003, rewrote subsections (a), (b), and (c).

§ 120-2.3. Contents of judgments invalidating apportionment or redistricting acts.

Every order or judgment declaring unconstitutional or otherwise invalid, in whole or in part and for any reason, any act of the General Assembly that apportions or redistricts State legislative or congressional districts shall find with specificity all facts supporting that declaration, shall state separately and with specificity the court's conclusions of law on that declaration, and shall, with specific reference to those findings of fact and conclusions of law, identify every defect found by the court, both as to the plan as a whole and as to individual districts. (2003-434, 1st Ex. Sess., s. 8.)

Editor's Note. — Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Session Laws 2003-434, 1st Ex. Sess., s. 16, made this section effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

CASE NOTES

Constitutionality. — G.S. 120-2.3 and G.S. 120-2.4 are not unconstitutional limitations on the judicial branch, as they allow the General Assembly to exercise its proper responsibilities and they decrease the risk that the courts will encroach upon the responsibilities of the legislative branch, pursuant to N.C. Const. art. I, § 6. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

§ 120-2.4. Opportunity for General Assembly to remedy defects.

If the General Assembly enacts a plan apportioning or redistricting State legislative or congressional districts, in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two weeks. In the event the General Assembly does not act to remedy any identified defects to its plan within that period of time, the court may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court. (2003-434, 1st Ex. Sess., s. 9.)

Editor's Note. — Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Session Laws 2003-434, 1st Ex. Sess., s. 16, made this section effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

CASE NOTES

Constitutionality. — G.S. 120-2.3 and G.S. 120-2.4 are not unconstitutional limitations on the judicial branch, as they allow the General Assembly to exercise its proper responsibilities and they decrease the risk that the courts will encroach upon the responsibilities of the legislative branch, pursuant to N.C. Const. art. I, § 6. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

§ 120-2.5. Direct appeal to Supreme Court.

Appeal lies of right directly to the Supreme Court from any final order or judgment of a court declaring unconstitutional or otherwise invalid in whole or in part and for any reason any act of the General Assembly that apportions or redistricts State legislative or congressional districts. (2003-434, 1st Ex. Sess., s. 10.)

Editor's Note. — Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Session Laws 2003-434, 1st Ex. Sess., s. 16, effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

ARTICLE 1A.

Legislative Retirement System.

§ 120-4.22A. Post-retirement increases in allowances.

(a) Retired members and beneficiaries of the Retirement System shall receive post-retirement increases in allowances on the same basis as post-retirement increases in allowances are provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System.

(b) In accordance with subsection (a) of this section, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1986, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj).

(d) In accordance with subsection (a) of this section, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1988, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(*ll*) and (mm).

(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss).

(g) In accordance with subsection (a) of this section, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1992, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1992 and June 30, 1992.

(h) In accordance with subsection (a) of this section, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1993, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on January 1, 1993. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1993, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1993, and June 30, 1993.

(i) In accordance with subsection (a) of this section, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1994, shall be increased by three and one-half percent (3.5%) of the allowance payable on January 1, 1994. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1994, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1994, and June 30, 1994.

(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995.

(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996.

(*l*) In accordance with subsection (a) of this section, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1997, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1997, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1997, and June 30, 1997.

(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998.

(n) In accordance with subsection (a) of this section, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1999, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1999, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1999, and June 30, 1999.

(o) In accordance with subsection (a) of this section, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2000, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2000, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2000, and June 30, 2000.

(p) In accordance with subsection (a) of this section, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2001, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2001, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2001, and June 30, 2001.

(q) In accordance with subsection (a) of this section, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2002, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2002,

but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2002, and June 30, 2002.

(r) In accordance with subsection (a) of this section, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2003, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2003, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2003, and June 30, 2003.

(s) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2004, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2004, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2004, and June 30, 2004. (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d); 1987 (Reg. Sess., 1988), c. 1086, s. 22(d); 1989, c. 752, s. 41(d); 1989 (Reg. Sess., 1990), c. 1077, s. 11; 1991 (Reg. Sess., 1992), c. 900, s. 53(d); 1993, c. 321, s. 74(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(k); 1995, c. 507, s. 7.22(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(c); 1997-443, s. 33.22(f); 1998-153, s. 21(c); 1999-237, s. 28.23(c); 2000-67, s. 26.20(f); 2001-424, s. 32.22(c); 2002-126, s. 28.8(d); 2003-284, s. 30.17(c); 2004-124, s. 31.17(c).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.17(c), effective July 1, 2004, added subsection (s).

§ 120-4.27. Death benefit.

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars ($15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees. (1983, c.

761, s. 238; 1985, c. 400, s. 9; 1987, c. 824, s. 1; 1998-212, s. 28.27(d); 2004-147, s. 4.)

Effect of Amendments. — Session Laws 2004-147, s. 4, effective July 1, 2004, and applicable to persons dying on or after that date, added the section heading, which already existed; inserted "but before July 1, 2004," in the first sentence of the fourth paragraph; and added the last paragraph.

Article 6.

Acts, Journals, and Reports to the General Assembly.

§ 120-20. When acts take effect.

Editor's Note. — Session Laws 2004-203, s. 49(a), effective October 1, 2004, rewrote the Article heading which formerly read: "Acts and Journals."

§ 120-29.5. State agency reports to the General Assembly.

Whenever a report is directed by law or resolution to be made to the General Assembly, the State agency preparing the report shall deliver one copy of the report to each of the following officers: the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the House Principal Clerk, and the Senate Principal Clerk; and two copies of the report to the Legislative Library. The State agency is encouraged to inform members of the General Assembly that an electronic copy is available. This section does not affect any responsibilities for depositing documents with the State Library or the State Publications Clearinghouse under Chapter 125 of the General Statutes. (2004-203, s. 49(b).)

Editor's Note. — Session Laws 2004-203, s. 49(c), made this section effective October 1, 2004.

Article 6A.

Submission of Acts.

§ 120-30.9B. Statewide statutes; State Board of Elections.

(a) The Executive Director of the State Board of Elections shall seek approval as required by 42 U.S.C. § 1973c for all of the following:

(1) Within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes or as provided in subsection (b) of this section, which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965; and

(2) Within 30 days all alterations of precinct boundaries under G.S. 163-132.2(c) in counties covered by Section 5 of the Voting Rights Act of 1965.

(b) With respect to acts of the General Assembly that amend, delete, add to, modify, or repeal any provision relating to apportioning or redistricting of State legislative or congressional districts, the Attorney General of North Carolina shall seek approval of the plan as required by 42 U.S.C. § 1973c. (1985, c. 579,

s. 1; 1989, c. 440, s. 4; 1995, c. 20, s. 4; 2001-319, s. 11; 2003-434, 1st Ex. Sess., s. 12.)

Editor's Note. —

Session Laws 2003-434, 1st Ex. Sess., s. 15, contains a severability clause.

Effect of Amendments. — Session Laws 2003-434, 1st Ex. Sess., s. 12, effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts, designated the formerly undesignated provisions of the section as subsection (a); in subsection (a), substituted "seek approval as required by 42 U.S.C. § 1973c for all of the following" for "submit to the Attorney General of the United States"; in subdivision (a)(1), inserted "or as provided in subsection (b) of this section" following "of the General Statutes"; and added subsection (b).

Article 7.

Legislative Services Commission.

§ 120-36. Legislative Services Officer of the General Assembly.

Editor's Note. — Session Laws 2003-284, ss. 6.12(a)-(c), as amended by Session Laws 2004-161, s. 47.1 provide: "(a) There is created a Joint Committee on Executive Budget Act Revisions. The Committee shall be composed of 8 members, four of whom shall be Representatives who are members of the Appropriations Committee appointed by the Speaker of the House of Representatives and four of whom shall be Senators who are members of the Appropriations Committee appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall designate one member as cochair and the President Pro Tempore of the Senate shall designate one member as cochair. The Committee shall meet upon call of the cochairs.

"(b) The Committee shall consider contemporary financial management practices in reviewing the current budget process. The Committee shall recommend any changes to the Executive Budget Act that are needed to modernize and improve the processes of budget preparation, budget adoption, budget execution, and program evaluation. The Committee shall report its recommendations to the 2005 General Assembly on or before its convening.

"(c) The Legislative Services Office shall assign professional and clerical staff to assist the Committee in its work. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate."

Article 8.

Elected Officers.

§ 120-37. Elected officers; salaries; staff.

(a) At the convening of the first session of the General Assembly following each biennial election of members of the General Assembly, each house shall elect a principal clerk for a term of two years, subject to the condition that each officer shall serve at the pleasure of the house that elected him or her and until his or her successor is elected. The reading clerk and sergeant-at-arms of the Senate shall serve for terms of two years, subject to the condition that each serves at the pleasure of the Senate and until the officer's successor is elected. The reading clerk and sergeant-at-arms of the House of Representatives shall serve as provided in the rules of the House.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of three hundred eleven dollars ($311.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus

mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only.

(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ninety thousand five hundred fourteen dollars ($90,514) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(d) The Legislative Services Commission may authorize additional full-time staff employees of the office of each principal clerk. The Speaker may assign to the Principal Clerk of the House additional duties for the periods between sessions and during recesses of the General Assembly. The President pro tempore of the Senate may assign to the Principal Clerk of the Senate additional duties for the periods between sessions and during recesses of the General Assembly.

(e) The principal clerks and the sergeants-at-arms may, upon authorization of the Legislative Services Commission, employ temporary assistants to prepare for each legislative session, serve during the session, and perform necessary duties following adjournment.

(f) Following adjournment sine die of each session of the General Assembly, each principal clerk shall retain in his office for a period of two years every bill and resolution considered by but not enacted or adopted by his house, together with the calendar books and other records deemed worthy of retention. At the end of two years, these materials shall be turned over to the Office of Archives and History of the Department of Cultural Resources for ultimate retention or disposition. (1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17; 1987 (Reg. Sess., 1988), c. 1086, ss. 10, 11; c. 1100, s. 16(c); 1989, c. 752, ss. 27, 28; 1991, c. 756, s. 34; 1991 (Reg. Sess., 1992), c. 900, ss. 36, 37; 1993, c. 321, ss. 53, 54; 1993 (Reg. Sess., 1994), c. 769, ss. 7.6, 7.7; 1995, c. 507, ss. 7.9, 7.10; 1996, 2nd Ex. Sess., c. 18, ss. 28.7, 28.8; 1997-443, ss. 33.13, 33.14; 1998-153, ss. 10, 11; 1998-212, s. 28.7(a); 1999-237, ss. 28.7, 28.8; 2000-67, ss. 26.7, 26.8; 2001-424, ss. 32.8, 32.9; 2002-159, s. 35(f); 2004-124, ss. 31.8(b), 31.9(b).)

Editor's Note. —

Session Laws 2003-284, s. 30.8, as amended by Session Laws 2004-124, s. 31.8(a), provides: "For the 2003-2004 fiscal year, the compensation of General Assembly principal clerks shall remain as set forth in G.S. 120-37, except that there shall be awarded a compensation bonus for the 2003-2004 fiscal year as authorized in this Part."

Session Laws 2003-284, s. 30.9, as amended by Session Laws 2004-124, s. 31.9(a), provides: "For the 2003-2004 fiscal year, the compensation of General Assembly sergeant-at-arms and reading clerks shall remain as set forth in G.S. 120-37."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, ss. 31.8(b) and 31.9(b), effective July 1, 2004, substituted "three hundred eleven dollars ($311.00)" for "two hundred ninety two dollars ($292.00)" in subsection (b); and substituted "ninety thousand five hundred fourteen dollars ($90,514)" for "eighty-eight thousand three hundred six dollars ($88,306)" in subsection (c).

Article 9A.

Lobbying.

§ 120-47.2. Registration procedure.

(a) A lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying. A separate registration statement is required for each lobbyist's principal.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses.

(e) Each registration statement required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable. (1933, c. 11, s. 2; 1973, c. 1451; 1975, c. 820, s. 1; 1983, c. 713, s. 51; 1991, c. 740, s. 1.1; 2004-203, s. 50(a).)

Effect of Amendments. — Session Laws 2004-203, s. 50.(a), effective August 17, 2004, deleted "State" preceding "Legislative Library" in subsection (d).

Article 12H.

Joint Legislative Education Oversight Committee.

§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.

Editor's Note. — Session Laws 2004-179, s. 6.1, as amended by Session Laws 2004-199, s. 51, provides: "To ensure that the State's citizens are academically prepared and equipped for current job opportunities and jobs of the future in North Carolina's growing knowledge economy, the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall, within 60 days after this act becomes law, contract with a private consulting firm that has experience in higher education to conduct a comprehensive study of the mission and educational program needs for the University System and the Community College System. The Board of Governors and the State Board may enter into contracts with consultants for the purposes authorized in this section without complying with the provisions of Article 3C of Chapter 143 of the General Statutes. The study shall in-

clude all of the following:

"(1) An analysis of demographic, economic, and educational data regarding the needs for higher education programming in the State as a whole, as well as in all geographic and economic regions of the State.

"(2) An updated enrollment projection for each System and each institution that includes adult, noncredit, career, and degree program enrollments.

"(3) An analysis of current program offerings and majors in undergraduate, graduate, nondegree, and workforce training programs, offered by each institution.

"(4) Recommendations as to how the institutions might better serve current and emerging needs related to existing and new programs; opportunities for regional program delivery; enhanced effectiveness and quality that can be achieved via sharing of resources, and program partnerships and collaborations both within and between higher education systems; and opportunities for online program delivery and other distance technology delivery systems.

"(5) An analysis of and suggested updates to existing long-range capital plans of both the University and Community College Systems that will address land acquisition and facility needs to support the program recommendations identified in this study, taking into account opportunities for modernization of and new uses for existing facilities.

"(6) With regard to the University System, there shall be special emphasis on the development of signature programs for Historically Black Colleges and Universities and the University of North Carolina at Pembroke. In conducting the study, the consulting firm shall take into account that the General Assembly finds the Historically Black Colleges and Universities and the University of North Carolina at Pembroke to be institutions with important historical traditions and equally important contemporary purposes and, as such, are valuable and indispensable assets of The University of North Carolina and the State. The General Assembly intends to encourage the continued growth and development of those constituent institutions and would resist any suggestion to eliminate the historical function and purpose of those institutions.

"(7) With regard to both the University System and the Community College System, there shall be an acknowledgement of the existence and importance of a strong liberal arts education foundation and, at the same time, an emphasis on existing and new programs specifically aimed at meeting business, industry, workforce, and career needs of North Carolina in the State's changing and growing knowledge-based economy, taking into account, as appropriate, State and regional economic strategies."

Article 12L.

Revenue Laws Study Committee.

§ 120-70.108. Property Tax Subcommittee.

(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of up to eight members. The Senate cochair of the Committee shall designate up to four members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The House cochair of the Committee shall designate up to four members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs.

(b) The Property Tax Subcommittee shall study, examine, and, if necessary, recommend changes to the property tax system. The Subcommittee shall include in its study an examination of all classes of property, including exemptions and exclusions of property from the property tax base. The Subcommittee shall also study the present-use value system, including the following:

(1) Examine the implementation and application of the current present-use value statutes.

(2) Evaluate other tax credits, including adjustments to and credits for ad valorem taxes, to encourage agricultural, forestry, horticultural, and conservation use of land.

(3) Evaluate the treatment of undeveloped land in ad valorem tax.
(4) Evaluate the possibility of amending the present-use value system and developing other tax incentives to encourage conservation and environmental protection of land. The study shall include the feasibility of allowing lands managed for conservation and the preservation of water quality, wildlife habitats, and other conservation purposes to be taxed at their present-use value.
(5) Evaluate the possibility of adding more specific land and resource management criteria to the sound management programs required for all lands enrolled in the present-use value system.
(6) Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirement for land to qualify as forestland.

(c) The Subcommittee shall report any recommendations to the Revenue Laws Study Committee. (2002-184, s. 8; 2004-170, s. 35.)

Effect of Amendments. — Session Laws 2004-170, s. 35, effective August 2, 2004, in subsection (a), substituted "up to eight members" for "six members," and substituted "up to four members" for "three members" two times.

Article 12N.

Joint Legislative Growth Strategies Oversight Committee.

(Effective until January 16, 2007)

§ 120-70.120. (Effective until January 16, 2007) Creation and membership of Joint Legislative Growth Strategies Oversight Committee.

The Joint Legislative Growth Strategies Oversight Committee is established. The Committee consists of 12 members as follows:
(1) Six members of the Senate appointed by the President Pro Tempore of the Senate; and
(2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2003 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment. (2001-491, s. 3.1; 2004-161, s. 3.2.)

Editor's Note. —

Session Laws 2001-491, s. 3.3, as amended by 2004-161, s. 3.2, makes this Article effective January 15, 2002, and provides that it will expire January 16, 2007. Prior to its expiration on January 16, 2005, the Committee shall report to the General Assembly on its activities conducted pursuant to ss. 3.1 to 3.3 of Session Laws 2001-491.

Session Laws 2004-161, s. 3.1, provides: "The Joint Legislative Growth Strategies Oversight Committee may study the issues of:

"(1) Delegating authority to cities and counties (S.B. 160-Clodfelter).

"(2) Modernizing city and county planning (S.B. 914-Clodfelter).

"(3) Transferable development rights."

§ 120-70.121. (Effective until January 16, 2007) Purpose and powers of Committee.

(a) The Joint Legislative Growth Strategies Oversight Committee shall examine, on a continuing basis, growth and development issues and strategies in North Carolina in order to make ongoing recommendations to the General Assembly on ways to promote comprehensive and coordinated local, regional, and State growth planning and public investment, taking into consideration regional differences within the State. In this examination, the Committee may:

(1) Study the recommendations of the Commission to Address Smart Growth, Growth Management, and Development Issues established pursuant to S.L. 1999-237, Section 16.7, and determine what legislation is necessary and desirable to effectuate those recommendations;

(2) Consider strategies that help communities and regions maximize the benefits of growth by developing transportation choices, protecting natural and cultural resources, enhancing the vitality of downtowns and existing neighborhoods, removing barriers to affordable housing and preserving housing choice while preserving a viable economic climate and industry, and building greater regional cooperation on development issues;

(3) Analyze legislation from other states regarding local, regional, and State planning and growth management;

(4) Assess the viability of a comprehensive statewide growth policy;

(5) Determine how to increase the full range of affordable housing opportunities for low- and moderate-income North Carolinians;

(6) Study the fiscal relationship between State agencies and the communities in which they are located. This study may:

a. Analyze the direct and indirect economic and financial benefits and relative burdens and costs of the presence of a State agency in a community to a local government.

b. Consistent with Article V, Section 2 of the North Carolina Constitution, which exempts State property from taxation, examine the unfunded costs associated with the expansion of a State agency in a community and recommend who should assume responsibility for those costs and the appropriate funding sources.

c. Discuss the requirements local governments seek to impose on State agencies and determine whether those requirements should be applied, or applied differently, to State agencies; and

(7) Study any other matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2001-491, s. 3.1; 2004-161, s. 3.2.)

§ 120-70.122. (Effective until January 16, 2007) Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Growth Strategies Oversight Committee. The Committee shall meet upon the joint call of the Strategies cochairs.

(b) A quorum of the Committee is seven members. Only recommendations, including proposed legislation, receiving at least six affirmative votes may be included in a Committee report to the General Assembly. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The cochairs of the Committee may call upon other knowledgeable persons or experts to assist the Committee in its work.

(d) Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (2001-491, s. 3.1; 2004-161, s. 3.2.)

Article 14.

Legislative Ethics Act.

Part 1. Code of Legislative Ethics.

§ 120-85. (Effective January 1, 2006) Definitions.

As used in this Article:

(1) "Business with which associated" means any enterprise, incorporated or otherwise, doing business in the State of which the person or any member of the person's immediate household is a director, officer, owner, partner, employee, or of which the person and the person's immediate household, either singularly or collectively, is a holder of securities worth five thousand dollars ($5,000) or more at fair market value as of December 31 of the preceding year, or constituting five percent (5%) or more of the outstanding stock of the enterprise.

(1a) "Economic interest" includes matters involving a business with which the person is associated or a nonprofit corporation or organization with which the person is associated.

(2) "Immediate household" means the person, the person's spouse, and all of the person's dependent children.

(2a) "Nonprofit corporation or organization with which associated" means any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate household is a director, officer, governing board member, employee or independent contractor as of December 31 of the preceding year.

(3) "Vested trust" as set forth in G.S. 120-96(4) means any trust, annuity or other funds held by a trustee or other third party for the benefit of the person or a member of the person's immediate household. (1975, c. 564, s. 1; 2004-199, s. 31(a).)

Section Set Out Twice. — The section above is effective January 1, 2006. For the section as in effect until January 1, 2006, see the main volume.

Editor's Note. — Session Laws 2004-199, s. 31(f), made the amendments to this section by s. 31(a), effective January 1, 2006, and applicable to candidates running for office on or after

that date, to persons appointed to fill vacancies for the 2007 and subsequent General Assemblies, and to presiding officers of the 2007 and subsequent General Assemblies.

Effect of Amendments. — Session Laws 2004-199, s. 31(a), rewrote the section. See editor's note for effective date and applicability.

§ 120-87. (Effective January 1, 2006) Disclosure of confidential information.

(a) No legislator shall use or disclose in any way confidential information gained in the course of the legislator's official activities or by reason of the legislator's official position that could result in financial gain for: (i) the legislator; (ii) a business with which the legislator is associated; (iii) a nonprofit corporation or organization with which the legislator is associated; (iv) a member of the legislator's immediate household; or (v) any other person.

(b) As used in this section, "confidential information" means information defined as confidential by statute. (1975, c. 564, s. 1; 2004-199, s. 31(b).)

Section Set Out Twice. — The section above is effective January 1, 2006. For the section as in effect until January 1, 2006, see the main volume.

Editor's Note. — Session Laws 2004-199, s. 31(f), made the amendments to this section by s. 31(b), effective January 1, 2006, and applicable to candidates running for office on or after that date, to persons appointed to fill vacancies for the 2007 and subsequent General Assemblies, and to presiding officers of the 2007 and subsequent General Assemblies.

Effect of Amendments. — Session Laws 2004-199, s. 31(b), rewrote the section. See editor's note for effective date and applicability.

Part 2. Statement of Economic Interest.

§ 120-96. (Effective January 1, 2006) Contents of statement.

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Committee, and the person filing the statement shall supply all of the following information:

(1) The identity, by name, of all businesses, nonprofit corporations or organizations with which the person is associated.

(2) The character and location of all real estate of a fair market value of more than five thousand dollars ($5,000), other than the person's personal residence (curtilage), in the State in which the person, or a member of the person's immediate household, has any beneficial interest, including an option to buy and a lease for 10 years or more.

(3) The type of each creditor to whom the person, or a member of the person's immediate household, owes more than five thousand dollars ($5,000), except indebtedness secured by lien upon the person's personal residence only.

(4) The name of each "vested trust" in which the person or a member of the person's immediate household has a financial interest of more than five thousand dollars ($5,000) and the nature of the interest.

(5) The name and nature of the person and the person's immediate household member's respective business or profession or employer and the types of customers and types of clientele served.

(6) A list of businesses with which the person is associated that do business with the State, and a brief description of the nature of the business.

(6a) A list of nonprofit corporations or organizations with which the person is associated and which receive State funds, and a brief description of the nature of the programs receiving funds.

G.S. 120-96 is set out twice. See notes.

(7) In the case of a person who practices a profession, whether individually or as a member of a professional association, a list of clients, by the type of business, whom the person or the person's firm or partnership has charged or who have paid to the person or the person's firm or partnership two thousand five hundred dollars ($2,500) or more for professional services rendered during the previous calendar year. This list need not include the name of the client but shall list the type of the business of each such client or class of client, and brief description of the nature of the services rendered.

(b) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the signature date. (1975, c. 564, s. 1; 1989 (Reg. Sess., 1990), c. 890, s. 1; 2001-119, s. 5; 2004-199, s. 31(c).)

Section Set Out Twice. — The section above is effective January 1, 2006. For the section as in effect until January 1, 2006, see the main volume.

Editor's Note. — Session Laws 2004-199, s. 31(f), made the amendments to this section by s. 31(c), effective January 1, 2006, and applicable to candidates running for office on or after that date, to persons appointed to fill vacancies for the 2007 and subsequent General Assemblies, and to presiding officers of the 2007 and subsequent General Assemblies.

Effect of Amendments. — Session Laws 2004-199, s. 31(c), rewrote subsection (a). See editor's note for effective date and applicability.

Part 3. Legislative Ethics Committee.

§ 120-99. Creation; composition.

(a) The Legislative Ethics Committee is created to consist of ten members, five Senators appointed by the President Pro Tempore of the Senate, among them — two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and five members of the House of Representatives appointed by the Speaker of the House, among them — two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's appointees. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. However, a cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. (1975, c. 564, s. 1; 1985, c. 790, s. 6; 1991, c. 739, s. 15; 1995, c. 180, s. 1; 2004-199, s. 31(d).)

Effect of Amendments. — Session Laws 2004-199, s. 31(d), effective August 17, 2004, added subsection designations to the previously undesignated paragraphs; and in subsection

(b), inserted "as the appointing officers" preceding "shall each designate" and added the last two sentences.

§ 120-100. Term of office; vacancies.

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly.

(b) A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only. (1975, c. 564, s. 1; 1995, c. 180, s. 2; 2004-199, s. 31(e).)

Effect of Amendments. — Session Laws 2004-199, s. 31(e), effective August 17, 2004, added subsection designations to the previously undesignated paragraphs; and added subsection (c).

Article 16.

Legislative Appointments to Boards and Commissions.

§ 120-121. Legislative appointments.

Editor's Note. — Session Laws 2004-161, ss. 50.1 through 50.7, create the Study Commission on State Boards, Commissions, and Council for the purpose of examining the organization, powers, duties, functions, and funding of State boards, commissions, and councils. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2005 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2005 General Assembly.

§ 120-122. Vacancies in legislative appointments.

When a vacancy occurs in any office subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives, upon the recommendation of the President Pro Tempore of the Senate, or upon the recommendation of the President of the Senate, and the vacancy occurs either: (i) after election of the General Assembly but before convening of the regular session; (ii) when the General Assembly has adjourned to a date certain, which date is more than 20 days after the date of adjournment; (iii) after sine die adjournment of the regular session; or (iv) when the term of office expires and a successor has not been appointed, then the Governor may appoint a person to serve until the expiration of the term or until the General

Assembly fills the vacancy, whichever occurs first. The General Assembly may fill the vacancy in accordance with G.S. 120-121 during a regular or extra session. When a person is holding over in office after the expiration of the term, for the purpose of this section that office may be filled as if it were vacant. Before making an appointment, the Governor shall consult the officer who recommended the original appointment to the General Assembly (the Speaker of the House of Representatives, the President Pro Tempore of the Senate, or the President of the Senate), and ask for a written recommendation. After receiving the written recommendation, the Governor must within 30 days either appoint the person recommended or inform the officer who made the recommendation that he is rejecting the recommendation. Failure to act within 30 days as required under the provisions of the preceding sentence shall be deemed to be approval of the candidate, and the candidate shall be eligible to enter the office in as full and ample extent as if the Governor had executed the appointment. The Governor shall not appoint a person other than the person so recommended. Any position subject to initial appointment by the General Assembly but not filled prior to sine die adjournment of the Session at which the position was created or adjournment to a date certain which date is more than 20 days after the date of adjournment of the session at which the position was created may be filled by the Governor under this section as if it were a vacancy occurring after the General Assembly had made an appointment. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 717, ss. 112, 113; 1985, c. 752, ss. 1, 2; 1993, c. 563, s. 13; 2004-187, s. 5; 2004-195, s. 7.)

Editor's Note. — Session Laws 2004-187, s. 14, contains a severability clause.

Effect of Amendments. — Session Laws 2004-187, s. 5, and Session Laws 2004-195, s. 7, both effective August 17, 2004, each deleted "other than by the expiration of term" following "When a vacancy occurs," and rewrote former clause (iii) as present clauses (iii) and (iv) in the first sentence; and inserted the third sentence.

§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

(1) The Board of Agriculture, as established by G.S. 106-2.

(1a) Not effectuated.

(1b) The Rules Review Commission as established by G.S. 143B-30.1.

(2) The Art Museum Building Commission, as established by G.S. 143B-59.

(3) The Governor's Advocacy Council for Persons with Disabilities, as established by G.S. 143B-403.2.

(3a) The State Banking Commission, as established by G.S. 53-92.

(4) The Board of Public Telecommunications Commissioners, as established by G.S. 143B-426.9.

(5) The Board of Transportation, as established by G.S. 143B-350.

(6) The Board of Trustees Teachers' and State Employees' Retirement System, as established by G.S. 135-6.

(6a) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 33.

(7) The Coastal Resources Commission, as established by G.S. 113A-104.

(8) The Environmental Management Commission, as established by G.S. 143B-283.

(8a) The Genetic Engineering Review Board, as created by G.S. 106-769.

(9) The State Fire and Rescue Commission, as established by G.S. 58-78-1.

(10) The Public Officers and Employees Liability Insurance Commission, as established by G.S. 58-32-1.
(11) Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 4.
(12) Repealed by Session Laws 1987, c. 71, s. 4.
(13) The North Carolina Criminal Justice Education and Training Standards Commission, as established by G.S. 17C-3.
(14) The North Carolina Housing Finance Agency Board of Directors, as established by G.S. 122A-4.
(15) The North Carolina Seafood Industrial Park Authority, as established by G.S. 113-315.25.
(16) Repealed by Session Laws 1985, c. 479, s. 153(b).
(17) The Board of Trustees of the North Carolina School of Science and Mathematics, as established by G.S. 116-233.
(18) The North Carolina Board of Science and Technology, as established by G.S. 143B-426.30.
(19) Repealed by Session Laws 1989, c. 500, s. 107(b).
(20) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(a).
(21) The Board of Trustees of the University of North Carolina Center for Public Television, as established by G.S. 116-37.1.
(22) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, as established by G.S. 143B-147.
(23) Repealed by Session Laws 1993, c. 501, s. 12.
(24) The North Carolina Alcoholism Research Authority, as established by G.S. 122C-431.
(25) **(For contingent repeal, see editor's note)** The North Carolina Ports Railway Commission, as established by G.S. 143B-469.
(25a) The North Carolina Global TransPark Authority as established under G.S. 63A-3.
(26) The North Carolina State Ports Authority, as established by G.S. 143B-452.
(27) The Property Tax Commission, as established by G.S. 105-288.
(28) The Social Services Commission, as established by G.S. 143B-154.
(29) The North Carolina State Commission of Indian Affairs, as established by G.S. 143B-407.
(30) The Wildlife Resources Commission, as established by G.S. 143-240.
(31) The North Carolina Council for Women, as established by G.S. 143B-393.
(31a) The North Carolina Structural Pest Control Committee, as established by G.S. 106-65.23.
(32) The Board of Trustees of North Carolina Museum of Art, established by G.S. 140-5.13.
(33) The North Carolina Sheriffs' Education and Training Standards Commission, established by G.S. 17E.
(33a) Repealed by Session Laws 1987, c. 738, s. 41(d).
(34) The Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, as established by G.S. 143B-426.24.
(34a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1024, s. 23(b).
(34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
(35) The Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan, as established by G.S. 135-39.
(36) Repealed by Session Laws 2004-199, s. 27(b), effective August 17, 2004.
(37) The State Board of Chiropractic Examiners as established by G.S. 90-139.

(38) The North Carolina Manufactured Housing Board, as established by G.S. 143-143.10.
(39) Repealed by Session Laws 1987, c. 71, s. 4.
(40) The Alarm System Licensing Board, as established by G.S. 74D-4.
(41) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1011, s. 2.1(c).
(42) The Crime Victims Compensation Commission, as established by G.S. 15B-3.
(43) The North Carolina Council on Ocean Affairs, as established by G.S. 143B-390.10.
(44) The Child Care Commission, as established by G.S. 143B-168.3.
(45) Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.
(45a) The North Carolina Teaching Fellows Commission, as established by G.S. 115C-363.22.
(46) The Board of Directors of the North Carolina Arboretum, as established in G.S. 116-240.
(47) The North Carolina Agricultural Finance Authority, as established by G.S. 122D-4.
(48) Reserved for future codification purposes.
(49) The Northeastern North Carolina Farmers Market Commission as established by G.S. 106-720.
(50) The Southeastern North Carolina Farmers Market Commission as established by G.S. 106-727.
(50a) The North Carolina Board of Dietetics/Nutrition as created by Article 25 of Chapter 90 of the General Statutes.
(51) The State Building Commission, as established by G.S. 143-135.25.
(52) The Commission on School Facility Needs, established by G.S. 115C-489.4.
(53) **(Effective retroactively to September 1, 1997)** The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.51.
(54) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(55) Repealed by Session Laws 1998-217, s. 45, effective October 31, 1998.
(56) Repealed by Session Laws 2001-474, s. 13, effective November 29, 2001.
(57) Repealed by Session Laws 2004-129, s. 35, effective July 1, 2004.
(58) The Appraisal Board created in G.S. 93E-1-5.
(59) Repealed by Session Laws 1997-286, s. 7.
(59a) The North Carolina Principal Fellows Commission established by G.S. 116-74.41.
(60) Repealed by Session Laws 1997-443, s. 8.26b.
(61) The State Health Plan Purchasing Alliance Board, as established by G.S. 143-625.
(62) The Northeastern North Carolina Regional Economic Development Commission, as established by G.S. 158-8.2.
(63) The Teacher Academy Board of Trustees, as established by Section 17.9 of House Bill 229 of the 1995 General Assembly [G.S. 116-30.01].
(63a) The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9.
(64) A facility authority established under Part 4 of Article 20 of Chapter 160A of the General Statutes.
(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4.
(65) Repealed by Session Laws 1998-217, s. 45.

(66) The Local Government Commission, as established by G.S. 159-3.
(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8.
(68) The State Personnel Commission.
(69) The North Carolina Partnership for Children, Inc., established pursuant to Part 10B of Article 3 of Chapter 143B of the General Statutes, and all local partnerships established pursuant to this Part.
(70) The Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(71) The Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(72) The North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.
(73) Repealed by Session Laws 2000-149, s. 5, as amended by Session Laws 2003-425, s. 3, effective December 31, 2003.
(74) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes.
(75) The North Carolina Turnpike Authority.
(76) The Economic Investment Committee established under G.S. 143B-437.54.
(77) **(Repealed effective December 31, 2006)** The e-NC Authority created in Part 2F of Article 10 of Chapter 143B of the General Statutes. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, ss. 2, 6; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18; 1987 (Reg. Sess., 1988), c. 993, s. 27; 1989, c. 139, s. 2; c. 168, s. 8; c. 239, s. 7; c. 500, ss. 107(b), 109(g); c. 625, s. 24; c. 727, s. 140; c. 750, s. 4; c. 752, s. 148(c); 1989 (Reg. Sess., 1990), c. 827, s. 14; c. 1024, s. 23(a)-(d); c. 1074, s. 32(a)-(c); 1991, c. 134, s. 1; c. 301, s. 1; c. 668, s. 2; c. 749, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 14(f); c. 1007, s. 37; c. 1030, ss. 33, 51.14; c. 1044, s. 10(b); 1993, c. 321, ss. 85(d), 135(b), 309.1(b); c. 405, s. 18.1; c. 419, s. 13.1; c. 501, s. 12; c. 529, s. 3.9; 1993 (Reg. Sess., 1994), c. 777, s. 4(f); 1995, c. 324, s. 17.9(i); c. 458, s. 2; c. 490, ss. 12(b), 17(b), 21(b), 30(b), 37(b); c. 517, s. 39(d); 1997-286, s. 7; 1997-443, s. 8.26; 1997-506, s. 42; 1998-181, s. 3; 1998-212, s. 12.37B(e); 1998-217, s. 45; 1998-224, s. 19(c); 1998-225, s. 1.2; 2000-147, s. 5; 2000-148, s. 2; 2000-149, ss. 2, 5; 2000-162, s. 2; 2001-474, s. 13; 2001-487, s. 21(b); 2002-126, s. 6.6(b); 2002-133, s. 5; 2002-172, s. 2.5; 2003-416, s. 2; 2003-425, ss. 2, 3; 2004-129, s. 35; 2004-199, s. 27(b).)

Effect of Amendments. — Session Laws 2004-129, s. 35, effective July 1, 2004, repealed subdivision (57).

Session Laws 2004-199, s. 27(b), effective August 17, 2004, repealed subdivision (36).

Article 26.

Joint Legislative Oversight Committee on Information Technology.

§ 120-230. Creation and purpose of the Joint Legislative Oversight Committee on Information Technology.

There is established the Joint Legislative Oversight Committee on Information Technology. The Committee shall review current information technology that impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The goals and objectives of the Committee shall be to develop electronic commerce in the State and to coordinate the use of information technology by State agencies in a manner that assures that the citizens of the State receive quality services from all State agencies and that the needs of the citizens are met in an efficient and effective manner. The Committee shall examine, on a continuing basis, systemwide issues affecting State government information technology, including, but not limited to, State information technology operations, infrastructure, development, financing, administration, and service delivery. The Committee may examine State agency or enterprise-specific information technology issues. The Committee shall make ongoing recommendations to the General Assembly on ways to improve the effectiveness, efficiency, and quality of State government information technology. (1999-237, s. 22(a); 2004-129, s. 7A(b).)

Editor's Note. — Session Laws 2004-129, s. 7A(a), effective July 1, 2004, substituted "Legislative Oversight" for "Select" in the Article heading.

Effect of Amendments. — Session Laws 2004-129, s. 7A(b), effective July 1, 2004, substituted "Legislative Oversight" for "Select" in the section heading and the first sentence, and added the last three sentences.

§ 120-231. Committee duties; reports.

(a) The Joint Legislative Oversight Committee on Information Technology may:

(1) Evaluate the current technological infrastructure of State government and information systems use and needs in State government and determine potential demands for additional information staff, equipment, software, data communications, and consulting services in State government during the next 10 years. The evaluation may include an assessment of ways technological infrastructure and information systems use may be leveraged to improve State efficiency and services to the citizens of the State, including an enterprise-wide infrastructure and data architecture.

(2) Evaluate information technology governance, policy, and management practices, including policies and practices related to personnel and acquisition issues, on both a statewide and project level.

(3) Study, evaluate, and recommend changes to the North Carolina General Statutes relating to electronic commerce.

(4) Study, evaluate, and recommend action regarding reports received by the Committee.

(5) Study, evaluate, and recommend any changes proposed for future development of the information highway system of the State.

(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

Office of Information Technology Services

(c) The Committee shall submit annual reports to the General Assembly on or before the convening of the regular session of the General Assembly each year. The Committee may submit interim reports at any time it deems appropriate. (1999-237, s. 22(a); 2004-129, ss. 7A(c), 36.)

Editor's Note. — Session Laws 2004-129, ss. 7A(c) and 36 both amended subsection (b) in the coded bill drafting format provided by G.S. 120-20.1. The amendment by 2004-129, s. 36 failed to incorporate the changes made by 2004-129. s. 7A(c). The section is set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2004-129, s. 7A.(c), effective July 1, 2004, substituted "Legislative Oversight" for "Select" in subsection (a); in subsection (b), substituted "State Chief Information Officer" for "Information Resource Management Commission" and substituted "Office of Information Technology Services" for "Information Resource Management Commission"; and rewrote subsection (c).

Session Laws 2004-129, s. 36, effective July 1, 2004, twice substituted "State Chief Information Officer" for "Information Resource Management Commission" in subsection (b).

§ 120-232. Committee membership; terms; organization; vacancies.

(a) The Committee shall consist of 16 members as follows:

(1) Eight members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate. At least two appointees shall be members of the Senate Appropriations Committee.

(2) Eight members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives. At least two appointees shall be members of the House of Representatives Appropriations Committee.

(3), (4) Repealed by Session Laws 2004-129, s. 7A(d), effective July 1, 2004.

(b) Members of the Committee shall serve terms of two years beginning at the convening of the General Assembly in each odd-numbered year, with no prohibition against being reappointed, except initial appointments shall begin on appointment and end on the day of convening of the 2005 General Assembly.

(c) Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected, but resignation or removal from service constitutes resignation or removal from service on the Committee.

(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each select a legislative member from their appointees to serve as cochair of the Committee.

(e) The Committee shall meet at least once a quarter and may meet at other times upon the call of the cochairs. A majority of the members of the Committee shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Committee shall be necessary for action to be taken by the Committee.

(f) All members shall serve at the will of their appointing officer. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1999-237, s. 22(a); 2001-486, s. 2.7; 2004-129, s. 7A(d).)

Effect of Amendments. — Session Laws 2004-129, s. 7A.(d), effective July 1, 2004, in subsection (a), in subdivisions (1) and (2), substituted "eight" for "five" and added the last

sentence; repealed subdivisions (3) and (4), and deleted the undesignated paragraph following subdivision (4); rewrote subsection (b); deleted "who are elected officials" following "Members" in subsection (c).

Chapter 121.

Archives and History.

Article 1.

General Provisions.

Sec.
121-4. Powers and duties of the Department of Cultural Resources.

Article 4.

Conservation and Historic Preservation Agreements Act.

Sec.
121-34. Short title.
121-42. Citation of Article.

Article 1.

General Provisions.

§ 121-4. Powers and duties of the Department of Cultural Resources.

The Department of Cultural Resources shall have the following powers and duties:

(1) To accept gifts, bequests, devises, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or legator, the Department may either expend both the principal and interest of any gift or bequests or may invest such funds in whole or in part, by and with the consent of the State Treasurer.

(2) To conduct a records management program, including the operation of a records center or centers and a centralized microfilming program, for the benefit of all State agencies, and to give advice and assistance to the public officials and agencies in matters pertaining to the economical and efficient maintenance and preservation of public records.

(3) To preserve and administer, in the North Carolina State Archives, such public records as may be accepted into its custody, and to collect, preserve, and administer private and unofficial historical records and other documentary materials relating to the history of North Carolina and the territory included therein from the earliest times. The Department shall carefully protect and preserve such materials, file them according to approved archival practices, and permit them, at reasonable times and under the supervision of the Department, to be inspected, examined, or copied: Provided, that any materials placed in the keeping of the Department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.

(4) To have materials on the history of North Carolina properly edited, published as other State printing, and distributed under the direction of the Department. The Department may charge a reasonable price for such publications and devote the revenue arising from such sales to the work of the Department.

(5) With the cooperation of the State Board of Education and the Department of Public Instruction to develop, conduct, and assist in the coordination of a program for the better and more adequate teaching of State and local history in the public schools and the institutions of the community college system of North Carolina, including, as appropriate, the preparation and publication of suitable histories of all

counties and of other appropriate materials, the distribution of such materials to the public schools and community college system for a reasonable charge, and the coordination of this program throughout the State.

(6) To maintain and administer the North Carolina Museum of History, to collect and preserve therein important historical and cultural materials, and according to approved museum practices to classify, accession, house, and when feasible exhibit such materials and make them available for study.

(7) To select suitable sites on property owned by the State of North Carolina, or any subdivision of the State, for the erection of historical markers calling attention to nearby historic sites and prepare appropriate inscriptions to be placed on such markers. The Department shall have all markers manufactured, and when completed, each marker shall be delivered to the Department of Transportation for payment and erection under the provisions of G.S. 136-42.2 and 136-42.3. The Secretary is authorized to appoint a highway historical marker advisory committee to approve all proposed highway historical markers and to establish criteria for carrying out this responsibility.

(8) In accordance with G.S. 121-9 of this Chapter, to acquire real and personal properties that have statewide historical, architectural, archaeological, or other cultural significance, by gift, purchase, devise, or bequest; to preserve and administer such properties; and, when necessary, to charge reasonable admission fees to such properties. In the acquisition of such property, the Department shall also have the authority to acquire nearby or adjacent property adjacent to properties having statewide significance deemed necessary for the proper use, administration, and protection of historic, architectural, archaeological, or cultural properties, or for the protection of the environment thereof.

(9) To administer and enforce reasonable rules adopted and promulgated by the Historical Commission for the regulation of the use by the public of such historical, architectural, archaeological, or cultural properties under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and having been filed according to law, shall have the force and effect of law and any violation of such regulations shall constitute a Class 3 misdemeanor.

(10) To coordinate the objectives of the state-created historical and commemorative commissions with the other policies, objectives, and programs of the Department of Cultural Resources.

(11) To organize and administer a junior historian program, in cooperation with the Department of Public Education, the public schools, and other agencies or organizations that may be concerned therein.

(12) With the approval of the Historical Commission, to dispose of any accessioned records, artifacts, and furnishings in the custody of the Department that are determined to have no further use or value for official or administrative purposes or for research and reference purposes.

(13) To promote and encourage throughout the State knowledge and appreciation of North Carolina history and heritage by encouraging the people of the State to engage in the preservation and care of archives, historical manuscripts, museum items, and other historical materials; the writing and publication of State and local histories of high standard; the display and interpretation of historical materials;

the marking and preservation of historic, architectural, or archaeological structures and sites of great importance; the teaching of North Carolina and local history in the schools and colleges; the appropriate observance of events of importance to the State's history; the publicizing of the State's history through media of public information; and other activities in historical and allied fields.

(14) With the approval of the Historical Commission, to charge and collect fees not to exceed cost for photographs, photocopies of documents, microfilm and other microforms and other audio or visual reproductions of public records or other documentary materials, objects, artifacts, and research materials; and for the restoration and preservation of documents and other materials important for archival or historical purposes.

(15) To encourage and develop, in cooperation with the Department of Administration and in consultation with the Department of Transportation, the Department of Commerce, the Department of Environment and Natural Resources, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and the Historic Preservation Foundation of North Carolina, Inc., a central clearinghouse for information on historic preservation for the benefit and use of public and private agencies and persons in North Carolina.

(16) Repealed by Session Laws 2004-203, s. 51, effective August 17, 2004.

(17) **(See Editor's note)** To enter into an agreement with a private nonprofit corporation for the management of facilities to provide food and beverages at the North Carolina Museum of History. Any net proceeds received by the private nonprofit corporation shall be devoted to the work of the Department. Any private nonprofit corporation entering into an agreement with the Department with regard to the management of the facilities may enter into further agreements with private persons or corporations concerning the operation of the facilities. The Department may enter into an agreement in regard to obtaining or installing equipment, furniture, and furnishings for such facilities. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C.S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1; 1959, c. 68, s. 1; 1971, c. 345, s. 3; 1973, c. 476, s. 48; 1977, c. 464, s. 38; 1981, c. 721; 1989, c. 379; c. 727, s. 218(83); c. 751, s. 11; 1991, c. 757, s. 5; 1991 (Reg. Sess., 1992), c. 959, s. 30; 1993, c. 522, s. 8; c. 539, s. 915; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a); 2004-203, s. 51.)

Effect of Amendments. — Session Laws 2004-203, s. 51, effective August 17, 2004, repealed subdivision (16).

Article 4.

Conservation and Historic Preservation Agreements Act.

§ 121-34. Short title.

The title of this Article shall be known as the "Conservation and Historic Preservation Agreements Act." (1979, c. 747, s. 1; 2004-195, s. 1.3.)

Effect of Amendments. — Session Laws 2004-195, s. 1.3, effective August 17, 2004, substituted "Conservation and Historic Presevation" for "Historic Preservation and Conservation."

§ 121-42. Citation of Article.

This Article shall be known and may be cited as the "Conservation and Historic Preservation Agreements Act." (1979, c. 747, s. 9; 2004-195, s. 1.4.)

Effect of Amendments. — Session Laws 2004-195, s. 1.4, effective August 17, 2004, substituted "the Conservation" for "Uniform Conservation" and "Agreements" for "Agreement."

Chapter 122A.

North Carolina Housing Finance Agency.

Sec.
122A-4. North Carolina Housing Finance Agency.

§ 122A-1. Short title.

North Carolina Home Protection Pilot Program and Loan Fund. — Session Laws 2004-124, ss. 20A.1(a)-(e) provide: "(a) The North Carolina Housing Finance Agency shall develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

"(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

"(1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Program shall include counties selected at the discretion of the Agency on the basis of increased rates of foreclosure, actual foreclosure filings, unemployment, the need of local counseling agencies for increased capacity to serve clients in need of assistance to avoid losing their homes to foreclosure, the availability of funds, and other factors the Agency determines to be relevant.

"(2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.

"(3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.

"(4) Designate, approve, and fund nonprofit counseling agencies in counties participating in the Program to be available to assist the Agency in implementing the provisions of this section, and to provide services such as direct mortgagee negotiations on behalf of unemployed workers, and to process loan applications for the Agency.

"(5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.

"(6) No later than May 1, 2005, report to the General Assembly on the effectiveness of the Program in accomplishing its purposes, and provide any other information the Agency determines is pertinent or that the General Assembly requests.

"(b) As used in this section, the following definitions apply:

"(1) Agency. — The North Carolina Housing Finance Agency.

"(2) Counseling agency. — A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.

"(3) Mortgage. — An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.

"(4) Mortgagee. — The owner of a beneficial interest in a mortgage loan, the servicer for the owner of abeneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

"(c) The North Carolina Housing Finance Agency shall conduct a study and convene meetings of experts for the purpose of developing a report to the 2005 General Assembly. The report shall include recommendations regarding (i) the problem of increasing foreclosure filings statewide, (ii) improvements to the laws regarding foreclosure procedures and other laws that impact foreclosure filings, and (iii) the benefits and feasibility of creating a foreclosure avoidance loan fund. The Agency may use no more than twenty-five thousand dollars ($25,000) of the funds appropriated in this act to the Agency to implement this subsection. The Agency shall report its recommendations to the General Assembly on or before May 1, 2005.

"(d) Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following:

"(1) Accelerate the maturity of any mortgage obligation covered under this section.

"(2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.

"(3) Take possession of any security of the mortgagor for the mortgage obligation.

"(4) Procure or receive a deed in lieu of foreclosure.

"(5) Enter judgment by confession pursuant to a note accompanying a mortgage.

"(6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

"The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

"If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

"Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within five business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

"(e) Rule Making. — Solely with respect to the adoption of procedures for the pilot program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

"(1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.

"(2) Accept oral and written comments on the proposed procedures.

"(3) Hold at least one public hearing on the proposed procedures."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 122A-4. North Carolina Housing Finance Agency.

(a) There is hereby created a body politic and corporate to be known as "North Carolina Housing Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Agency shall be governed by a board of directors composed of 13 members. The directors of the Agency shall be residents of the State and shall not hold other public office.

(c) The General Assembly shall appoint eight directors, four upon the recommendation of the Speaker of the House of Representatives (at least one of whom shall have had experience with a mortgage-servicing institution and one of whom shall be experienced as a licensed real estate broker), and four upon the recommendation of the President Pro Tempore of the Senate (at least one of whom shall be experienced with a savings and loan institution and one of whom shall be experienced in home building). Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Notwithstanding any other provision of law, the terms of the four noncategorical appointments by the General Assembly shall expire on June 30, 1983. Subsequent noncategorical appointments shall be for terms of two years each. The terms of the initial categorical appointees by the General Assembly upon the recommendation of the Speaker shall expire on June 30, 1983; the terms of subsequent appointees shall be two years. The term of one of the initial categorical appointees by the General Assembly upon the recommendation of the President of the Senate shall expire on June 30, 1983, and the other on June 30, 1985; the terms of subsequent appointees shall be four years.

(d) The Governor shall appoint four of the directors of the Agency; one of such appointees shall be experienced in community planning, one shall be experienced in subsidized housing management, one shall be experienced as a specialist in public housing policy, and one shall be experienced in the manufactured housing industry. The four appointees of the Governor shall be appointed for staggered four-year terms, two being appointed initially for three years and two for four years, and shall continue in office until their successors are duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term.

(e) Any member of the board of directors shall be eligible for reappointment. The 12 members of the board shall then elect a thirteenth member to the board by simple majority vote. Each member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the Secretary of State.

(f) The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the Board of Directors of the Agency. The Agency shall exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the State Personnel Act. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The salary of the Executive Director shall be fixed by the Board of Directors. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the State Personnel Act. The Board of Directors shall, subject to the approval of the Governor, elect and prescribe the duties of any other officers it finds necessary or advisable, and the Board of Directors shall fix the compensation of these officers. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

The Executive Director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The Secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and papers filed with the Agency, the minute book or journal of the Agency and its official seal. The Secretary may have copies made of all minutes and other records and documents of the Agency and may give

certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222; 1987, c. 305, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 26; 1995, c. 490, s. 24; 2004-124, s. 31.15(a).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 31.15(a), effective July 1, 2004, in the first paragraph of subsection (f), substituted "Board of Directors" for "General Assembly in the Current Operations Appropriations Act" in the seventh sentence, and in the ninth sentence, substituted "Board of Directors" for "General Assembly" and deleted "in the Current Operations Appropriations" from the end.

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

Sec.
122C-22. Exclusions from licensure; deemed status.
122C-30. Peer review committee; immunity from liability; confidentiality.

Article 3A.

Miscellaneous Provisions.

122C-80. Criminal history record check required for certain applicants for employment.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 2. State, County and Area Authority.

122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.

Part 4. Area Facilities.

122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

Part 6. Quality Assurance.

122C-191. Quality of services.

Article 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.
122C-265. Outpatient commitment; examination and treatment pending hearing.
122C-273. Duties for follow-up on commitment order.

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

122C-281. Affidavit and petition before clerk or magistrate; custody order.
122C-290. Duties for follow-up on commitment order.

Article 1.

General Provisions.

§ 122C-1. Short title.

Study — Issues Related to Mentally Ill Residents of Long-Term Care Facilities. — Session Laws 2004-124, ss. 10.2(a) and (b), provide: "(a) The Department of Health and Human Services shall work with long-term care providers and advocates for the elderly and the mentally ill to study issues concerning the care of mentally ill individuals residing in long-term care facilities. The study shall include:

"(1) Examining whether current State statutes and Departmental rules adequately address the populations served by long-term care facilities.

"(2) Exploring the development of separate licensure categories within the adult care home and nursing home designations to address the various populations being served.

"(3) Examining adult care home rules to determine whether they are easy to understand, attainable under current staffing patterns, give appropriate guidance to facility operators according to the needs and characteristics of residents served, support residents' freedom of choice, and whether they support the autonomy, dignity, and independence philosophy of assisted living.

"(4) Determining the most effective way to identify mentally ill individuals that have mental health treatment needs.

"(5) Examining the criteria for admission of mentally ill individuals to long-term care facilities to ensure that the health and safety of all residents are safeguarded.

"(6) Providing recommendations for improving the quality of care for mentally ill individuals in adult care homes and nursing homes including the potential cost associated with implementing therecommendations.

"(7) Identifying specific problems that exist due to mixing aging and mentally ill populations.

"(b) The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging by October 1, 2005. The Department of Health and Human Services shall include in this report how it defines 'mentally ill' for purposes of this study."

Mental Health Treatment Courts — Pilot Program. — Session Laws 2004-124, ss. 10.27(a)-(f), provides: "(a) The Administrative Office of the Courts shall establish pilot programs in judicial districts 15B, 26, and 28 that add a mental health treatment component to the existing drug treatment courts in those districts, thereby expanding those courts into therapeutic court programs aimed at providing treatment to repeat adult offenders with needs for either mental health or substance abuse services. The purpose of the mental health treatment component of the pilot programs is to facilitate cooperation between the State mental health system, mental health service providers, and the judicial system in order for the State mental health system to provide repeat adult offenders that need mental health services with treatment and other mental health services aimed at improving their ability to function in the community, thereby reducing recidivism and easing the workload of the courts.

"In expanding the drug treatment courts in these districts into therapeutic courts under this section, the Administrative Office of the Courts and the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall collaborate on a plan for the structure of the court process, treatment services provided by area authorities or county programs and other appropriate mental health service providers, and administration of the pilot programs. Treatment services provided under the mental health treatment court component shall use best treatment practices approved by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The collaborative effort required under this section shall also include consideration of the effectiveness and efficiency of the mental health treatment court component to determine feasibility of the statewide expansion of drug treatment courts into therapeutic courts.

"(b) The Administrative Office of the Courts shall report to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Senate and House Appropriations Subcommittees on Health and Human Services by March 1, 2005, on the implementation of the therapeutic treatment court pilot programs provided for in this section, including an evaluation of the effectiveness of the new mental health treatment component ofthose programs and recommendations on the feasibility and desirability of expanding the existing drug treatment court program into a statewide therapeutic court program.

"(c) There is appropriated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to the Judicial Department the sum of thirty-six thousand one hundred sixty-one dollars ($36,161) for the 2004-2005 fiscal year. These funds shall be used for administrative costs associated with expanding the Drug Treatment Court to serve adult repeatoffenders who are within the targeted population for mental health, developmental disabilities, and substance abuse services as defined in G.S. 122C-3(38).

"(d) There is appropriated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one hundred thirty-seven thousand nine hundred forty dollars ($137,940) for the 2004-2005 fiscal year. These funds shall be used for mental health treatment services to repeat adult offenders within the targeted population for mental health, developmental disabilities, and substance abuse services as defined in G.S. 122C-3(38).

"(e) Of the funds appropriated in this act to the Judicial Department, the sum of twenty thousand dollars ($20,000) for the 2004-2005 fiscal year shall be used to obtain an independent evaluation of the effectiveness of the pilot programs authorized under this section.

"(f) A county may appropriate county or other non-State funds to expand mental health services to adult repeat offenders served by the pilot programs for mental health treatment established under subsection (a) of this section. No State funds appropriated for this section shall be used to provide mental health services to nontargeted population adult repeat offenders."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Op-

erations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;

(3) State and federally operated facilities;

(4) Adult care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services;

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14);

(9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a 12-step, self-help, peer role modeling, and self-governance approach;

(10) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Correction, as described in G.S. 148-19.1; and

(11) A charitable, nonprofit, faith-based, adult residential treatment facility that does not receive any federal or State funding and is part of an international organization serving at least 50 countries that helps persons ages 18 through 40 overcome life-controlling problems and is a religious organization exempt from federal income tax under section 501(a) of the Internal Revenue Code.

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2; 1989, c. 625, s. 5; 1995, c. 535, s. 7; 1997-506, s. 43; 2000-67, s. 11.25A; 2001-424, s. 25.19(b); 2004-199, s. 32.)

Effect of Amendments. — Session Laws 2004-199, s. 32, effective August 17, 2004, added subdivision (a)(11); and made minor stylistic changes.

§ 122C-30. Peer review committee; immunity from liability; confidentiality.

For purposes of peer review functions of a facility licensed under the provisions of this Chapter:

(1) A member of a duly appointed peer review committee or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee; and

(2) Proceedings of a peer review or quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review or quality assurance process, but cannot be asked about the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings. (1989 (Reg. Sess., 1990), c. 1053, s. 2; 2004-149, s. 2.8.)

Effect of Amendments. — Session Laws 2004-149, s. 2.8, effective August 2, 2004, substituted "facility" for "hospital" in the first sentence; inserted "or quality assurance committee" in subdivision (1); in subdivision (2), inserted "or quality assurance" in the first sentence, inserted the fourth sentence, and in the last sentence, inserted "or quality assurance" preceding "process," and substituted gender neutral language.

Article 3A.

Miscellaneous Provisions.

§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. — As used in this section, "area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.

(b) Requirement. — An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. Notwithstanding G. S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Division of Facility Services. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Division of Facility Services, shall provide to the area authority the results of the national criminal history check. Area authorities shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of an area authority a State criminal history record check required by this section without the area authority having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the area authority. All criminal history information received by the area authority is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section.

(c) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the area authority shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the area authority. If the area authority disqualifies an applicant after consideration of the relevant factors, then the area authority may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. — An area authority and an officer or employee of an area authority that, in good faith, complies with this section shall be immune from civil liability for:

(1) The failure of the area authority to employ an individual on the basis of information provided in the criminal history record check of the individual.

(2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(e) Relevant Offense. — As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. — An area authority may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The area authority shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The area authority shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment. (2000-154, s. 4; 2001-155, s. 1; 2004-124, ss. 10.19D(c), (h).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 10.19D(i), provides: "Subsections (a) through (c) of this section become effective January 1, 2005. The remainder of this section becomes effective July 1, 2004."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, ss. 10.19D(c) and (h), inserted the seventh, eighth, and ninth sentences in subsection (b); and substituted "county, state, or federal criminal history of conviction or pending indictment of a crime" for "State crime" near the beginning of subsection (e). See editor's note for effective dates.

Article 4.

Organization and System for Delivery of Mental Health, Developmental Disabilities, and Substance Abuse Services.

Part 1. Policy.

§ 122C-102. Creation and membership of Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Support and Training for Long-Term Care Providers Caring for Residents With Mental Illnesses. — Session Laws 2004-144, ss. 1 through 4, provide: "SECTION 1. The Department of Health and Human Services shall study the mission of the Geriatric Mental Health Specialty Teams to assist long-term care facilities in serving all residents who are within the targeted populations, as identified in the State Plan developed pursuant to G.S. 122C-102. The Department shall include representatives from Area Authorities, Local Management Entities, the adult care home and the nursing home industries and other appropriate stakeholders. As part of this study, the Department shall consider whether to:

"(1) Create two separate teams, a Geriatric Mental Health Specialty Team to provide services to geriatric mental health residents who are part of the targeted population, and a LTC Mental Health Specialty Team to provide services to nongeriatric residents who are part of the targeted population in long-term care facilities.

"(2) Broaden the scope of and rename the Geriatric Mental Health Specialty Teams to LTC Mental Health Specialty Teams to reflect the expanded mission.

"SECTION 2. The Department of Health and Human Services shall also standardize these criteria across all mental health specialty teams:

"(1) Team purpose,

"(2) Eligibility for services,

"(3) Screening processes,

"(4) Referral processes, and

"(5) Forms, Training Manuals, Service Orders, and Authorizations.

"The Department shall proceed immediately with implementing any of these standards that are currently established. The Department shall provide a time line for implementation of the remaining criteria in its interim report required under Section 4 of this act.

"SECTION 3.The Department of Health and Human Services shall proceed immediately with implementation of the following:

"(1) Tracking expenditure data for each Team and each Area Program/Local Management Entity.

"(2) Tracking the number of facilities served, the number of clients served, and the types of services provided by each Team.

"(3) Tracking the use of clinicians with and without formal specialty training in mental health and geriatric mental health on the specialty teams.

"SECTION 4. The Department of Health and Human Services shall submit an interim report to the North Carolina Study Commission on

Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 30, 2004, on its efforts to standardize criteria; track expenditure data; and track the number of facilities served, clients served, and services provided by each Team. The Department shall submit a final report on its standardization and tracking efforts, and the results of its study, to the North Carolina Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 30, 2005."

Study of Mental Health Services for Domestic Violence Victims. — Session Laws 2004-186, s. 6.1 provides: "The Department of Health and Human Services shall study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs. The plan will address providing diagnostic and referral services for any client suspected of having a mental illness or a substance abuse problem. The plan will also address the delivery of appropriate services to clients meeting the target population criteria, as defined in the State Plan developed pursuant to G.S. 122C-102. Services must be best practices, as determined by the Department. The Department will consult various stakeholders in the domestic violence network of organizations. The Department will also consider the delivery of services to children identified through domestic violence programs. The Department shall also consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

"The Department shall make a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than October 1, 2004, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and the General Assembly on or before January 15, 2005."

Part 2. State, County and Area Authority.

§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.

(a) **(Effective until July 1, 2005.)** A county shall provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program established pursuant to G.S. 122C-115.1. To the extent this section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control. If a county that is a member of an area authority determines to provide its services through a county program or through a multicounty program, it may, with the agreement of the other counties comprising the area authority and the approval of the Secretary, simultaneously participate in a county program or a multicounty program while remaining a participating member of the area authority until the end of the subsequent fiscal year.

(a) **(Effective July 1, 2005.)** A county shall provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program established pursuant to G.S. 122C-115.1. To the extent this section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control.

(b) Counties shall and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Except as authorized in G.S. 122C-115.1, within a catchment area designated in the business plan pursuant to G.S. 122C-115.2, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

(d) Except as otherwise provided in this subsection, counties shall not reduce county appropriations and expenditures for current operations and

ongoing programs and services of area authorities or county programs because of the availability of State-allocated funds, fees, capitation amounts, or fund balance to the area authority or county program. Counties may reduce county appropriations by the amount previously appropriated by the county for one-time, nonrecurring special needs of the area authority or county program. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 5, 23; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1989, c. 625, s. 14; 1995 (Reg. Sess., 1996), c. 749, s. 1; 1999-202, s. 1; 2001-437, s. 1.8; 2004-124, s. 10.26(a).)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2005. The second version of subsection (a) is effective July 1, 2005.

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 10.26(a), effective July 17, 2004, and expiring July 1, 2005, added the last sentence of subsection (a).

Part 4. Area Facilities.

§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Services. — An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area facility, from a private facility authorized by the Department to provide this service, or, with the approval of the Department, from an agency that is located in another state.

(a1) Authorization of a Private Facility Provider. — The Department shall authorize a private facility located in this State to provide substance abuse services needed by a person to obtain a certificate of completion if the private facility complies with all of the requirements of this subsection:

(1) Notifies both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services.

(2) Agrees to comply with the laws and rules concerning these services that apply to area facilities.

(3) Pays the Department the applicable fee for authorizing and monitoring the services of the facility. The initial fee is payable at the time the facility notifies the Department of its intent to provide the services and by July 1 of each year thereafter. Collected fees shall be used by the Division for program monitoring and quality assurance. The applicable fee is based upon the number of assessments completed during the prior fiscal year as set forth below:

Number of Assessments	Fee Amount
0-24	$250.00
25-99	$500.00
100 or more	$750.00.

(b) Assessments.— To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the

client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM). The signature on the recommendation shall be the personal signature of the individual authorized to review the recommendation and not the signature of his or her agent. The signature shall reflect that the authorized individual has personally reviewed the recommendation and, with full knowledge of the contents of the recommendation, approved of the recommended treatment.

(b1) **(Effective October 1, 2005)** Persons Authorized to Conduct Assessments. — The following individuals are authorized to conduct a substance abuse assessment under subsection (b) of this section:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.

(2) A Certified Clinical Addiction Specialist (CCAS), as defined by the Commission.

(3) **(Repealed effective October 1, 2008. See note.)** A Substance Abuse Counselor Intern who is supervised by a Certified Clinical Supervisor (CCS), as defined by the Commission, and who meets the minimum qualifications established by the Commission for individuals performing substance abuse assessments.

(4) A person licensed by the North Carolina Medical Board or the North Carolina Psychology Board.

(5) A physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. — Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

(1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.

(2) The person has a prior conviction of an offense involving impaired driving.

(3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. — An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(e) Certificate of Completion. — Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) Fees. — A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a treatment facility or school a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(f1) Multiple Assessments. — If a person has more than one offense for which a certificate of completion is required under G.S. 20-17.6, the person shall pay the assessment fee required under subsection (f) of this section for each certificate of completion required. However, the facility shall conduct only one substance abuse assessment and recommend only one ADET school or treatment program for all certificates of completion required at that time, and the person shall pay the fee required under subsection (f) of this section for only one school or treatment program.

If any of the criteria in subdivisions (c)(1), (c)(2), or (c)(3) of this section are present in any of the offenses for which the person needs a certificate of completion, completion of a treatment program shall be required pursuant to subsection (c) of this section.

The provisions of this subsection do not apply to subsequent assessments performed after a certificate of completion has already been issued for a previous assessment.

(g) Out-of-State Services. — A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. — The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. — The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

(1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.

(2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.

(3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school,

the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.

(4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.

(5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.

(6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services. (1995, c. 496, ss. 10, 13; 2001-370, s. 9; 2003-396, ss. 1, 3, 4; 2004-197, ss. 1, 2, 3.)

Editor's Note. —

Session Laws 2003-396, s. 2, applicable to assessing agencies conducting substance abuse assessments on or after October 1, 2003, as amended by Session Laws 2004-197, s. 4, provides: "The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the programs offered by assessing agencies to clients who must obtain a substance abuse assessment and a certification of completion of a substance abuse program. The study should include information on the type of testing provided by an agency, the certification requirements for persons conducting alcohol and drug education traffic schools, the treatment offered by an agency, the average duration of a program, the average cost of treatment, the rates of recidivism, and the adequacy of the fee paid to the assessing agency by a client for a required substance abuse assessment and the adequacy of the fee paid to the treatment facility or school by a client for receiving treatment or education. The Committee must report its findings and any recommended legislation to the 2005 General Assembly."

Effect of Amendments. —

Session Laws 2004-197, s. 1, effective October 1, 2005, and applicable to substance abuse assessments conducted on or after that date, inserted subsection (b1).

Session Laws 2004-197, s. 2, effective October 1, 2008, and applicable to substance abuse assessments conducted on or after that date, repealed subdivision (b1)(3) which read: "(3) A Substance Abuse Counselor Intern who is supervised by a Certified Clinical Supervisor (CCS), as defined by the Commission, and who meets the minimum qualifications established by the Commission for individuals performing substance abuse assessments."

Session Laws 2004-197, s. 3, effective October 1, 2004, and applicable to substance abuse assessments administered on or after that date, substituted "one hundred dollars ($100)" for "fifty dollars ($50)" in subsection (f).

Part 5. State Facilities.

§ 122C-181. Secretary's jurisdiction over State facilities.

Editor's Note. —

Session Laws 2003-314, ss. 3.4(a), (a1), and (b), as amended by Session Laws 2004-124, s. 10.26A(a) and (b), provides: "(a) Dorothea Dix Hospital Property Study Commission. — If any of the State-owned real property encompassing the Dorothea Dix Hospital campus is no longer needed by Dorothea Dix Hospital and is not transferred to another State agency or agencies before the sale of any or all of the property to a nongovernmental entity, options for this sale shall be considered by the Dorothea Dix Hospital Property Study Commission. The Commission shall make recommendations on the options for sale of the property to the Joint Legislative Commission on Governmental Operations, the 2005 General Assembly, and the Appropriations Committees of the Senate and the House of Representatives before any sale of any or all parts of the property. The Commission shall terminate upon submission of its final report.

"(a1) The State Property Office, in consultation with the City of Raleigh, shall develop a Master Plan for the Dorothea Dix Campus. The State Property Office shall hire a consultant to assist with the development of the Master Plan. The State Property Office shall examine, among other things, operations for land conservation, mixed-use development, and anticipated State office space needs. The Master Plan shall reflect both State needs and local considerations. The State Property Office shall submit the Master Plan to the Dorothea Dix Prop-

erty Study Commission no later than April 1, 2005. The Commission shall review the Master Plan and shall make recommendations to the 2005 General Assembly.

"In order to enhance communication and feedback regarding the planning process, an oversight committee shall be established to oversee the development of the Master Plan. The oversight committee shall consist of five members: three shall be appointed by the Co-chairs of the Dorothea Dix Property Study Commission; one shall be appointed by the Raleigh City Council; and one shall be appointed by the Wake County Board of Commissioners. The oversight committee shall terminate upon the submission of the Master Plan to the Dorothea Dix Property Study Commission.

"(b) Creation and Membership. — The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of nine members, four appointed by the President Pro Tempore of the Senate and four appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 6. Quality Assurance.

§ 122C-191. Quality of services.

(a) The assurance that services provided are of the highest possible quality within available resources is an obligation of the area authority and the Secretary.

(b) Each area authority and State facility shall comply with the rules of the Commission regarding quality assurance activities, including: program evaluation; utilization and peer review; and staff qualifications, privileging, supervision, education, and training. These rules may not nullify compliance otherwise required by Chapter 126 of the General Statutes.

(c) Each area authority and State facility shall develop internal processes to monitor and evaluate the level of quality obtained by all its programs and services including the activities prescribed in the rules of the Commission.

(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary. The rules may provide that the Secretary has the authority to determine whether applicable standards of practice have been met.

(e) For purposes of peer review functions only:

(1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, " 'Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or

other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.

(3) Peer review information that is confidential and is not subject to discovery or use in civil actions under this section may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification function, including the Joint Commission on Accreditation of Healthcare Organizations. Information released under this subdivision shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and is not subject to discovery or use in any civil actions as provided under this subsection, and the standards review organization shall keep the information confidential subject to this section. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1053, s. 1; 1998-212, s. 12.35C(d); 1999-222, s. 1; 2004-149, s. 2.7.)

Effect of Amendments. — Session Laws 2004-149, s. 2.7, effective August 2, 2004, in subdivision (e)(2), inserted the fourth sentence, and substituted a gender neutral term; in subdivision (e)(3), twice substituted "this section" for "subdivision (2) of this subsection," added "including the Joint Commission on Accreditation of Healthcare Organizations" at the end of the first sentence, and in the second sentence, substituted "this section" for "that subdivision."

Article 5.

Procedures for Admission and Discharge of Clients.

Part 7. Involuntary Commitment of the Mentally Ill; Facilities for the Mentally Ill.

§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.

(a) Anyone who has knowledge of an individual who is mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in

dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to being mentally ill, is also mentally retarded, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably mentally ill and either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to a law enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist. If the clerk or magistrate finds that, in addition to probably being mentally ill, the respondent is also probably mentally retarded, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

(c) If the clerk or magistrate issues a custody order, the clerk or magistrate shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as follows:

(1) Persons described in G.S. 122C-266(b);
(2) Persons admitted pursuant to G.S. 15A-1321;
(3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
(4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 1985 (Reg. Sess., 1986), c. 863, s. 17; 1989 (Reg. Sess., 1990), c. 823, ss. 1, 2; c. 1024, s. 27.1; 1991, c. 37, s. 7; 1995 (Reg. Sess., 1996), c. 739, s. 6; 1997-456, s. 47; 2004-23, s. 1(a).)

Effect of Amendments. — Session Laws 2004-23, s. 1(a), effective June, 25, 2004, added the last sentence in subsection (e).

§ 122C-265. Outpatient commitment; examination and treatment pending hearing.

(a) If a respondent, who has been recommended for outpatient commitment by an examining physician or eligible psychologist different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law-enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The custody order is valid throughout the State. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination.

(b) The examining physician or the proposed outpatient treatment physician or center may prescribe to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards pending the district court hearing.

(c) In no event may a respondent released on a recommendation that he meets the outpatient commitment criteria be physically forced to take medication or forceably detained for treatment pending a district court hearing.

(d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If a respondent becomes dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated.

(f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated. (1983, c. 638, s. 11; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 6; 1989 (Reg. Sess., 1990), c. 823, s. 5; 1991, c. 636, s. 2(2); c. 761, s. 49; 2004-23, s. 2(a).)

Effect of Amendments. — Session Laws 2004-23, s. 2(a), effective June 25, 2004, inserted the second sentence in subsection (a).

§ 122C-273. Duties for follow-up on commitment order.

(a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer, or the center may administer, to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

(1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician, the physician's designee, or the center shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.

(2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent

taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The custody order is valid throughout the State. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.

(3) In no case may the respondent be physically forced to take medication or forcibly detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.

(4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.

(5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to himself, as defined by G.S. 122C-3(11)a., and others, as defined in G.S. 122C-3(11)b., may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised.

(b) If the respondent on outpatient commitment intends to move or moves to another county within the State, the designated outpatient treatment physician or center shall request that the clerk of court in the county where the outpatient commitment is being supervised calendar a supplemental hearing.

(c) If the respondent moves to another state or to an unknown location, the designated outpatient treatment physician or center shall notify the clerk of superior court of the county where the outpatient commitment is supervised and the outpatient commitment shall be terminated.

(d) If the commitment order directs inpatient treatment, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. The attending physician shall release or discharge the respondent in accordance with G.S. 122C-277. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 23-26; 1989 (Reg. Sess., 1990), c. 823, s. 9; 1991, c. 37, s. 14; 2004-23, s. 2(b).)

Effect of Amendments. — Session Laws 2004-23, s. 2(b), effective June 25, 2004, inserted the third sentence in subdivision (a)(2).

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

§ 122C-281. Affidavit and petition before clerk or magistrate; custody order.

(a) Any individual who has knowledge of a substance abuser who is dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to himself or others, he shall issue an order to a law-enforcement officer or any other person authorized by G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician or eligible psychologist, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). If the physician or eligible psychologist recommends commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, he shall issue an order for transportation to or custody at a 24-hour facility or release the respondent, pending hearing, as described in G.S. 122C-283(d)(1). If a physician or eligible psychologist executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by G.S. 122C-285.

(e) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed. The custody order is valid throughout the State.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-283(c) shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a facility directly, he may be accepted for admission in accordance with G.S. 122C-285. The facility shall notify the area authority within 24 hours of admission and further planning of treatment for the individual is the joint responsibility of the area authority and the facility as prescribed in the area plan. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 3; 1979, c. 164, s. 2; c. 915, ss. 3, 18; 1983, c. 383, s. 5; c. 638, ss. 3-5; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 4; 2004-23, s. 1(b).)

Effect of Amendments. — Session Laws 2004-23, s. 1(b), effective June 25, 2004, added the last sentence in subsection (e).

§ 122C-290. Duties for follow-up on commitment order.

(a) The area authority or physician responsible for management and supervision of the respondent's commitment and treatment may prescribe or administer to the respondent reasonable and appropriate treatment either on an outpatient basis or in a 24-hour facility.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area authority or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area authority or physician for examination. The custody order is valid throughout the State. The law enforcement officer shall turn the respondent over to the custody of the physician or area authority who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is necessary, or as provided in G.S. 122C-408(b). If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(c) If the respondent intends to move or moves to another county within the State, the area authority or physician shall notify the clerk of court in the county where the commitment is being supervised and request that a supplemental hearing be calendared.

(d) If the respondent moves to another state or to an unknown location, the designated area authority or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated. (1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 32; 1987, c. 674, s. 2; c. 750; 2004-23, s. 2(c).)

Effect of Amendments. — Session Laws 2004-23, s. 2(c), effective June 25, 2004, inserted the third sentence in subsection (b).

Article 6.

Special Provisions.

Part 2A. Broughton Hospital Joint Security Force.

§ 122C-430. Joint security force.

Local Modification. — Burke County: 2004-29, s. 2.

Chapter 122D.

North Carolina Agricultural Finance Act.

Sec.
122D-4. North Carolina Agricultural Finance Authority.

§ 122D-4. North Carolina Agricultural Finance Authority.

(a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture and Consumer Services. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Authority shall be composed of 10 members appointed to three-year terms as follows:

(1) One member appointed by the Governor to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by three.

(3) One member appointed by the Governor to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(8) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(10) The Commissioner or the Commissioner's designee shall serve ex officio, with the same rights and privileges, including voting rights, as other members.

(c) A member appointed under subdivisions (1) through (9) of subsection (b) of this section may be reappointed to no more than two successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired

term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.

(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper. (1983, c. 789, s. 1; 1985, c. 583, s. 2; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1989, c. 500, s. 109(e); 1989 (Reg. Sess., 1990), c. 1074, s. 32(b); 1995, c. 490, s. 4; 1997-261, s. 109; 2004-195, s. 5.1.)

Editor's Note. —

Session Laws 2004-195, s. 5.2, provides: "In order to alter the schedule of staggered terms of three years for the North Carolina Agricultural Finance Authority so that the same number of terms will expire each year and to provide for an orderly transition in membership of the Authority to the terms specified in G.S. 122D-4(b), as amended by Section 5.1 of this act, the following provisions shall apply:

"(1) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(1) through 1 July 2006.

"(2) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(2) through 1 July 2007.

"(3) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(3) through 1 July 2008.

"(4) George Graham of Lenoir County is appointed to serve in the position established by G.S. 122D-4(b)(4) through 1 July 2006.

"(5) James R. Britt of Duplin County is appointed to serve in the position established by G.S. 122D-4(b)(5) through 1 July 2007.

"(6) Deborah Mae Johnson of Sampson County is appointed to serve in the position established by G.S. 122D-4(b)(6) through 1 July 2008.

"(7) Ira S. Cline of Catawba County is appointed to serve in the position established by G.S. 122D-4(b)(7) through 1 July 2006.

"(8) Stan Crowe of Martin County is appointed to serve in the position established by G.S. 122D-4(b)(8) to serve through 1 July 2007.

"(9) David Hall of Rowan County is appointed to serve in the position established by G.S. 122D-4(b)(9) through 1 July 2008."

Session Laws 2004-195, s. 5.3, provides: "The limitation on the number of successive three-year terms that a member of the North Carolina Agricultural Finance Authority may serve as provided in G.S. 122D-4(c), as amended by Section 5.1 of this act, shall not apply to any person who is a member of the Authority at the time this act becomes effective."

Effect of Amendments. — Session Laws 2004-195, s. 5.1, effective August 17, 2004, rewrote subsections (b), (c), and (g).

Chapter 126.
State Personnel System.

Article 1.

State Personnel System Established.

Sec.
126-5. Employees subject to Chapter; exemptions.

Article 1.

State Personnel System Established.

§ 126-4. Powers and duties of State Personnel Commission.

CASE NOTES

Cited in McIntyre v. Forsyth County Dep't of Soc. Servs., 162 N.C. App. 94, 589 S.E.2d 745, 2004 N.C. App. LEXIS 52 (2004).

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:
(1) All State employees not herein exempt, and
(2) All employees of the following local entities:
a. Area mental health, developmental disabilities, and substance abuse authorities.
b. Local social services departments.
c. County health departments and district health departments.
d. Local emergency management agencies that receive federal grant-in-aid funds.
An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.
(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this section:
(1) "Exempt position" means an exempt managerial position or an exempt policymaking position.
(2) "Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.
(3) "Exempt policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.

(4) "Personnel professional" means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.

(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(20) Employees of the North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes.

(21) Employees of the Clean Water Management Trust Fund.

(22) Employees of the North Carolina Turnpike Authority.

(23) The Executive Administrator and the Deputy Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Health and Human Services, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(c8) Except as to the provisions of Articles 5, 6, 7, and 14 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Employees of the University of North Carolina Health Care System.

(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).

(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).

(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University.

(d)(1) Exempt Positions in Cabinet Department. — The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;

b. Department of Commerce;

c. Department of Correction;

d. Department of Crime Control and Public Safety;

e. Department of Cultural Resources;
f. Department of Health and Human Services;
g. Department of Environment and Natural Resources;
h. Department of Revenue;
i. Department of Transportation; and
j. Department of Juvenile Justice and Delinquency Prevention.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department. Notwithstanding the provisions of this subdivision, or the other requirements of this subsection, the Governor may at any time increase by five the number of exempt policymaking positions at the Department of Health and Human Services, but at no time shall the total number of exempt policymaking positions exceed 105. The Governor shall notify the General Assembly and the State Personnel Director of the additional positions designated hereunder.

(2) Exempt Positions in Council of State Departments and Offices. — The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. — The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. — These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. — In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds

to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. — The Governor, elected department head, or State Board of Education may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. — Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. — Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in subsection (c)(1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this

section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt.

(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3; 1989, c. 168, s. 9; c. 236, s. 3; c. 484; c. 727, s. 218(85); c. 751, s. 7(13); 1991, c. 65, s. 2; c. 84, ss. 1, 2; c. 354, s. 3; c. 749, s. 4; 1991 (Reg. Sess., 1992), c. 879, s. 5; c. 959, s. 85; 1993, c. 145, s. 1; c. 321, s. 145(b); c. 553, ss. 39, 40; 1993 (Reg. Sess., 1994), c. 777, s. 4(g); 1995, c. 141, ss. 3, 5; c. 393, s. 1; 1995 (Reg. Sess., 1996), c. 690, s. 15; 1997-443, ss. 11A.118(a), 11A.119(a), 22.2(b); 1997-520, s. 3; 1998-212, s. 11.8(b); 1999-84, s. 21; 1999-253, s. 1; 1999-434, s. 25; 2000-137, s. 4(nn); 2000-147, s. 4; 2000-148, s. 3; 2001-92, s. 2; 2001-424, s. 32.16(a); 2001-474, s. 15; 2001-487, ss. 21(d), 30(a), (b); 2002-126, s. 28.4; 2002-133, s. 4; 2004-124, s. 31.27(b); 2004-129, s. 37.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.27(b), effective July 1, 2004, added subdivision (c1)(23).

Session Laws 2004-129, s. 37, effective July 1, 2004, repealed subdivision (c1)(17).

CASE NOTES

This section controls which employees are subject to Chapter 126, etc.

Under G.S. 126-5(c)(1) and (c1)(8), the provisions of Chapter 126, the State Personnel Act, did not apply to state employees who were not career state employees, as defined in Chapter 126, or who were instructional and research staff, physicians, and dentists of the University of North Carolina, except for Chapter 126, Articles 6 and 7. Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

G.S. 126-5 stated in particular terms which state employees were covered by Chapter 126, prohibiting employment discrimination, and G.S. 126-16 addressed the same subject matter in general terms, but G.S. 126-16 did not affirmatively grant a remedy to an employee who was not otherwise covered by Chapter 126; in short, G.S. 126-5 controlled which employees were subject to Chapter 126. Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

When a state employee sought review of the termination of her employment, G.S. 126-5 foreclosed her reliance on any of the provisions of the State Personnel Act, Chapter 126, because she was exempt from the Act, was not a career state employee, and her position was classified as "instructional and research staff of the University of North Carolina." Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

Scope of Chapter 126's authority was set out in G.S. 126-5, which stated, in subdivision (a)(1), that the provisions of Chapter 126 applied to all state employees not therein exempt. Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

Application to UNC Instructional Staff. —

Assistant director of the North Carolina State University's Office of Disability Services for Students could not seek review of the termination of her employment through the Office of Administrative Hearings because, under G.S. 126-5(c1)(8), instructional and research

staff of the University of North Carolina were specifically exempted from all provisions of the State Personnel Act, G.S. 126-1 et seq., except Chapter 126, Articles 6 and 7. Woodburn v. N.C. State Univ., 156 N.C. App. 549, 577 S.E.2d 154, 2003 N.C. App. LEXIS 305 (2003), cert. denied, 357 N.C. 470, 584 S.E.2d 296 (2003).

Cited in Hodge v. N.C. DOT , 161 N.C. App. 726, 589 S.E.2d 737, 2003 N.C. App. LEXIS 2276 (2003).

Article 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-7. Compensation of State employees.

Editor's Note. — Session Laws 2004-124, s. 31.16C(a)and (b), provides: "(a) The State Personnel Commission and the Board of Governors of The University of North Carolina shall report to the Senate and the House of Representatives Appropriations Committees by February 15, 2005, on their joint recommendation to implement a unified leave policy for all State employees subject to Article 2 of Chapter 126 of the General Statutes, or alternatively, for employees of The University of North Carolina who are subject to that Article. The report at a minimum shall address all of the following items with respect to implementing a proposed unified leave policy:

"(1) The rationale for adopting a unified leave policy separate and apart from the current traditional leave policies for State employees in agencies, departments, and universities.

"(2) The potential financial impact on the Teachers' and State Employees' Retirement System with respect to the amount of unused leave an employee may count as credit toward retirement years of service.

"(3) The portability of employee leave balances when moving from the current traditional leave systems to a unified leave system and from a unified leave system to the current traditional leave system in other State agencies and departments.

"(4) The potential implementation and future continuation costs for a unified leave system.

"(5) A comparison of leave benefits between a unified leave program and the current traditional leave programs and policies.

"(6) A detailed plan as to the implementation of recommended leave policy changes and how career employees' leave will be converted under the new plan.

"(7) Any other relevant information and statutory changes that are needed.

"(b) No unified leave policy may be implemented without an act of the General Assembly expressly authorizing its implementation. This subsection does not apply to the University of North Carolina Health Care System, which shall continue to be governed by G.S. 116-37."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 6.

Equal Employment and Compensation Opportunity; Assisting in Obtaining State Employment.

§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

CASE NOTES

Employer's Use of Non-Objective Factors in Hiring. — Beyond the use of experience and training to limit a field of applicants, an employer is relatively free to value experience among the applicants as it sees fit in light of the skills required by the position to be filled.

This freedom is of intrinsic value to the hiring process and business judgment of decision makers. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Burden-Shifting Analysis Applies. — North Carolina Supreme Court has adopted the United States Supreme Court's "burden shifting" scheme set out in the McDonnell Douglas Corp. v. Green, 411 U.S. 792, 36 L. Ed. 2d 668 (1973); therefore North Carolina courts look to federal decisions for guidance in establishing evidentiary standards and principles of law to be applied in discrimination cases. In properly applying the burden-shifting scheme the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Employer's Articulation of Nondiscriminatory Reasons for Hiring Decisions. — Although a female African-American social services employee had 20 years' experience and the white male who was promoted instead of her had only eight years, the employer articulated nondiscriminatory reasons for its hiring decision, including initiative, community outreach, and communications skills. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Employer's Burden to Rebut Presumption of Discrimination. — Employer's burden is satisfied if he simply explains what he has done or produces evidence of legitimate nondiscriminatory reasons; the employer is not required to prove that its action was actually motivated by the proffered reasons for it is sufficient if the evidence raises a genuine issue of fact as to whether the claimant is a victim of intentional discrimination. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Evidence of Pretext for Discrimination. — Some of the factors that courts have considered as relevant evidence of pretext are: (1) Evidence that white employees involved in acts against the employer of comparable seriousness were retained or rehired, (2) Evidence of the employer's treatment of the employee during his term of employment, (3) Evidence of the employer's response to the employee's legitimate civil rights activities, and (4) Evidence of the employer's general policy and practice with respect to minority employees. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Plaintiff's Burden of Proving Discrimination. — Burden to establish a prima facie case of racial discrimination giving rise to a presumption of discrimination is as follows: (1) plaintiff is a member of a minority group; (2) she was qualified for a promotion; (3) she was passed over for the promotion; and (4) the person receiving the promotion was not a member of a protected class. To rebut the presumption of discrimination, the employer must clearly explain by admissible evidence the nondiscriminatory reasons for the employee's rejection or discharge; the plaintiff must then show by a preponderance of the evidence that the proffered explanation by the State is pretextual in nature, and that the employer intentionally discriminated. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Evidence. — During an attempt to show that an employer's proffered explanation of a nondiscriminatory reason for an employee's rejection or discharge is pretextual, the plaintiff can reuse evidence from her prima facie showing to assist in carrying her burden as to pretext though the prima facie presumption has been dispelled. However, the court is not at liberty to review the soundness or reasonableness of an employer's business judgment when it considers whether alleged disparate treatment is a pretext for discrimination: the sole question is what is the motivation behind the employer's decision. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

CASE NOTES

Construction. — Language of G.S. 126-34.1 of the State Personnel Act clearly and unambiguously states that the statutory list of appeal grounds in G.S. 126-34.1 is exclusive, and

this list does not provide for appeals to the Office of Administrative Hearings (OAH) of reductions in force (RIF) based on a lack of just cause; the North Carolina General Assembly clearly intended to deny the OAH jurisdiction over challenges to RIF on procedural violation grounds and to grant state employees the right to bring only those RIF claims that are specifically set out in G.S. 126-34.1 before OAH. Univ. of N.C. at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401, 2003 N.C. App. LEXIS 2277 (2003).

By its own terms of exclusion, G.S. 126-34.1 of the State Personnel Act supersedes and controls over any contrary earlier enactments, and given its clear and unambiguous language, the later enacted G.S. 126-34.1 supplants G.S. 126-35. Univ. of N.C. at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401, 2003 N.C. App. LEXIS 2277 (2003).

Reduction in Force Based on Lack of Just Cause or Procedural Violations Not Reviewable. — Because under G.S. 126-34.1 of the State Personnel Act, the Office of Administrative Hearings (OAH) did not have jurisdiction to determine whether employees' terminations under reductions in force were based on a lack of just cause or procedural violations, the trial court erred in holding otherwise and the employees' petitions for OAH review were to be dismissed on remand. Univ. of N.C. at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401, 2003 N.C. App. LEXIS 2277 (2003).

Cited in Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

§ 126-35. Just cause; disciplinary actions for State employees.

CASE NOTES

Section Supplanted by Later-Enacted G.S. 126-34.1. — By its own terms of exclusion, G.S. 126-34.1 of the State Personnel Act supersedes and controls over any contrary earlier enactments, and given its clear and unambiguous language, the later enacted G.S. 126-34.1 supplants G.S. 126-35. Univ. of N.C. at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401, 2003 N.C. App. LEXIS 2277 (2003).

§ 126-36. Appeal of unlawful State employment practice.

CASE NOTES

Employer's Legitimate Nondiscriminatory Reason. —

Although a female African-American social services employee had 20 years' experience and the white male who was promoted instead of her had only eight years, the employer articulated nondiscriminatory reasons for its hiring decision, including initiative, community outreach, and communications skills. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

§ 126-37. Personnel Commission to review Administrative Law Judge's recommended decision and make final decision.

CASE NOTES

Due Process Concerns in Discrimination Cases. — In discrimination cases, G.S. 126-37(b1) and G.S. 150B-36 provide that when the State Personnel Commission makes a finding of discrimination, this is binding upon the local appointing authority; the case is then subject to judicial review. Due process concerns are not as strong in discrimination cases because the local appointing authority will never have an opportunity to reverse a finding of discrimination by the State Personnel Commission. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

County Board of Social Services Is Not "Local Appointing Authority." —

Under G.S. 126-37(b1), decisions regarding discrimination cases made by the State Personnel Commission are advisory to the local appointing authority. Should the situation arise, there are no statutory alternatives when the local appointing authority might desire to re-

cuse herself or if she is disqualified from making the final decision. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Agency Decision Upheld Although Director Reviewed Own Employment Action. —

Due process was not violated when the local appointing authority who had discretion to reject or accept the State Personnel Commission's findings in a discrimination case pursuant to G.S. 126-37(b1) was the same person who made the allegedly discriminatory hiring decision. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Chapter 127A.

Militia.

Article 16.

National Guard Reemployment Rights.

Sec.
127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.

Article 16.

National Guard Reemployment Rights.

§ 127A-202. Rights.

CASE NOTES

Preclusion from Recovery. — G.S. 127A-202 and G.S. 127A-203 only provide a remedy for National Guardsmen who have been denied reinstatement to their employment upon return from active duty. Thus, where an employee, who was a Guardsmen did not claim that he was denied reemployment to his previous position after a period of active service, he had no cause of action under G.S. 127A-202 and G.S. 127A-203. Jones v. Philip Morris USA, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 6224 (M.D.N.C. Apr. 8, 2004).

§ 127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member of the North Carolina National Guard during the member's period of active service.

(e) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

(f) This section shall also apply when a member of the North Carolina National Guard is called into active duty at the direction of the President, the Governor, or by any other competent authority. (1997-153, s. 1; 2004-130, s. 3.)

Effect of Amendments. — Session Laws 2004-130, s. 3, effective August 1, 2004, added subsection (f).

CASE NOTES

Procedural Requirements for Commencing an Action. — To the extent that remedies under G.S. 127A-202.1 are available to an employee who is a National Guardsmen and is denied reinstatement to his employment upon return from active duty, the employee cannot maintain an action under G.S. 127A-202.1 if he does not meet the procedural requirements of first exhausting the required administrative remedies and acquiring a right-to-sue letter before bringing his action. Jones v. Philip Morris USA, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 6224 (M.D.N.C. Apr. 8, 2004).

§ 127A-203. Penalties for denial.

CASE NOTES

Preclusion from Recovery. — G.S. 127A-202 and G.S. 127A-203 only provide a remedy for National Guardsmen who have been denied reinstatement to their employment upon return from active duty. Thus, where an employee, who was a Guardsmen did not claim that he was denied reemployment to his previous position after a period of active service, he had no cause of action under G.S. 127A-202 and G.S. 127A-203. Jones v. Philip Morris USA, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 6224 (M.D.N.C. Apr. 8, 2004).

Chapter 127B.
Military Affairs.

Article 2.
Discrimination Against Military Personnel.

§ 127B-11. Private discrimination prohibited.

CASE NOTES

Violation of Statute Provides No Private Right of Action. — An employee's employment discrimination claim seeking redress pursuant to G.S. 127B-11 against his employer for allegedly terminating the employee as a result of his service as a National Guardsman was dismissed because G.S. 127B-11 did not provide for a private right of action, and penalty for violating it was a misdemeanor under G.S. 127B-15. Jones v. Philip Morris USA, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 6224 (M.D.N.C. Apr. 8, 2004).

§ 127B-15. Penalties.

CASE NOTES

Violation of Statute Provides No Private Right of Action. — An employee's employment discrimination claim seeking redress pursuant to G.S. 127B-11 against his employer for allegedly terminating the employee as a result of his service as a National Guardsman was dismissed because G.S. 127B-11 did not provide for a private right of action, and penalty for violating it was a misdemeanor under G.S. 127B-15. Jones v. Philip Morris USA, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 6224 (M.D.N.C. Apr. 8, 2004).

Chapter 127C.

Advisory Commission on Military Affairs.

Sec.
127C-2. Membership.

§ 127C-2. Membership.

(a) The North Carolina Advisory Commission on Military Affairs shall consist of 21 voting members, who shall serve on the Executive Committee, and 15 nonvoting, ex officio members who shall serve by reason of their positions.

(b) The Executive Committee shall be appointed as follows:

(1) Three members appointed by the Speaker of the House of Representatives, one of whom shall be a member of a recognized veterans' organization.

(2) Three members appointed by the President Pro Tempore of the Senate, one of whom shall be a member of a recognized veterans' organization.

(3) Fifteen members appointed by the Governor, consisting of:

a. Three representatives from the Jacksonville community.

b. Three representatives from the Havelock community.

c. Three representatives from the Goldsboro community.

d. Three representatives from the Fayetteville community.

e. Three public members from across the State.

(c) The following members, or their designee, shall serve ex officio:

(1) The Lieutenant Governor.

(1a) Secretary of Crime Control and Public Safety.

(2) Secretary of Commerce.

(2a) The Secretary of Transportation.

(2b) The Secretary of the Department of Environment and Natural Resources.

(3) Commanding General 18th Airborne Corps, Fort Bragg.

(4) Commanding General Marine Corps Base, Camp Lejeune.

(5) Commanding General Marine Corps Air Station, Cherry Point.

(6) Commander 4th FW, Seymour Johnson Air Force Base.

(7) Commander 43rd Airlift Wing, Pope Air Force Base.

(8) Commander of the U.S. Coast Guard Support Center, Elizabeth City.

(9) Adjutant General of the North Carolina National Guard.

(10) The Executive Director of the North Carolina League of Municipalities.

(11) The Executive Director of the North Carolina Association of County Commissioners.

(12) The Assistant Secretary for Veterans Affairs, Department of Administration.

(d) The Governor shall designate one member of the Executive Committee appointed pursuant to subsection (b) of this section to serve as chair. The Executive Committee shall elect four persons from amongst its membership to serve as vice-chairs.

(e) The terms of the members of the Executive Committee shall be as follows:

(1) The members initially appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve terms ending on December 31, 2003.

(2) Seven of the members appointed by the Governor shall serve initial terms ending on December 31, 2002.

(3) Eight of the members appointed by the Governor shall serve initial terms ending on December 31, 2003.

Thereafter, all members shall serve two-year terms. (2001-424, s. 12.1; 2001-486, s. 2.9(a), (b); 2004-49, s. 1.)

Effect of Amendments. — Session Laws 2004-49, s. 1, effective June 24, 2004, substituted "15 nonvoting" for "nine nonvoting" in subsection (a); and in subsection (c), added subdivision (1), redesignated former subdivision (1) as subdivision (1a), inserted the subdivisions designated herein as subdivisions (2a) and (2b), and added the subdivisions designated herein as subdivisions (10), (11), and (12).

Chapter 128.

Offices and Public Officers.

Article 3.

Retirement System for Counties, Cities and Towns.

Sec.
128-27. Benefits.

Article 1.

General Provisions.

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.

CASE NOTES

Statutory Factors Not Present. — When taxpayers sued county commissioners for entering into a contract which benefitted one of the commissioners, they did not have a claim under G.S. 128-10 because they did not show a public official who was liable on his bond or commissioners who refused to take action against such official, and the existence of insurance coverage issued by the North Carolina Counties Liability and Property Insurance Pool Fund did not provide a bond, as insurance and suretyship were not synonymous terms. Gibbs v. Mayo, 162 N.C. App. 549, 591 S.E.2d 905, 2004 N.C. App. LEXIS 252 (2004), cert. denied, — N.C. —, 599 S.E.2d 45 (2004).

Article 3.

Retirement System for Counties, Cities and Towns.

§ 128-27. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Repealed by Session Laws 1971, c. 325, s. 12.

(4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable

service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(a2) Discontinued Service Retirement Allowance. — A member whose employment with a participating employer is involuntarily terminated as a result of a termination event as defined in this subsection may be allowed a discontinued service retirement allowance, provided that the discontinued service retirement allowance is approved by the terminated member's participating employer, and provided that reemployment with that participating employer is not available to the member at the time of the termination event. For purposes of this section, "termination event" means termination of employment as a result of (i) the participating employer's cessation of operations; (ii) the participating employer's dissolution; (iii) the merger of a participating employer with and into an unrelated entity, other than another participating employer; (iv) the acquisition of the participating employer by an unrelated entity, other than another participating employer; or (v) the determination by the participating employer that a reduction in force will accomplish economies in the participating employer's budget resulting from either the elimination of a job and its responsibilities or from lack of funds to support the job. Final action approving the discontinued service retirement allowance for a terminated member by the member's participating employer shall be taken in an open meeting.

Upon the occurrence of a termination event, and subject to the provisions of this subsection, an unreduced discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 55 years of age. Alternatively, upon the occurrence of a termination event, a discontinued service retirement allowance, not otherwise allowed under this Chapter, may be approved for terminated members with 20 or more years of creditable service who are at least 50 years of age, reduced by one-fourth of one percent (¼ of 1%) for each month that retirement precedes the member's fifty-fifth birthday.

In cases in which a discontinued service retirement allowance is approved, the terminated member's employer shall be responsible for making a lump-sum payment to the Retirement System's Board of Trustees equal to the actuarial present value of the additional liabilities imposed upon the Retirement System, to be determined by the Retirement System's consulting actuary, as a result of the discontinued service retirement allowance, plus an administrative fee to be determined by the Board of Trustees. An employer shall not discriminate against any member or group of members employed by the employer in the approval or disapproval of a discontinued service retirement allowance.

(b) Service Retirement Allowance of Persons Retiring on or after July 1, 1959, but prior to July 1, 1965. — Upon retirement from service on or after

July 1, 1959, but prior to July 1, 1965, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of 65 years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the System been in operation and he contributed thereunder at the rate of

a. Six and twenty-five hundredths percent (6.25%) of his compensation if such certificate is a Class A certificate, or

b. Five percent (5%) of his compensation if such certificate is a Class B certificate, or

c. Four percent (4%) of his compensation if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Persons Retiring on or after July 1, 1965, but prior to July 1, 1967. — Upon retirement from service on or after July 1, 1965, but prior to July 1, 1967, a member shall receive a service retirement allowance which shall consist of:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800) multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800), plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above but shall be reduced by five twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(b).

(b2) Service Retirement Allowances of Persons Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance which shall consist of:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter

percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provision, any member whose creditable service commenced prior to July 1, 1965, and policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b3) Service Retirement Allowances of Persons Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance which shall consist of:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3a) If the member's service retirement date occurs before his sixty-second birthday but on or after his sixtieth birthday and on or after completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.

(3b) If the member's service retirement date occurs before his sixtieth birthday but on or after completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (3a) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1976. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1976, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b5) Service Retirement Allowances of Members Retiring on or after July 1, 1976, but prior to July 1, 1978. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1976, but prior to July 1, 1978, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs on or after his sixtieth birthday but before his sixty-fifth birthday and prior to his completion of 30 or more years of service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed police-

men or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1978, but prior to July 1, 1983. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1978, but prior to July 1, 1983, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b7) Service Retirement Allowances of Members Retiring on or after July 1, 1983, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1983, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven one-hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefits provided by G.S. 128-27(b).

(b8) Service Retirement Allowance of Law Enforcement Officers Retiring on or after January 1, 1986, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after January 1, 1986, but before July 1, 1988, a member who is a law enforcement officer or an eligible former law enforcement officer shall receive the following service retirement allowance:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓ of 1%) for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) If the member's service retirement date occurs on or after his 65th birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3).

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3).

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1995 but before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would

have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b15)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b16) Service Retirement Allowance of Member Retiring on or after July 1, 1997, but before July 1, 1998. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 1998, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b16)(1)a., reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion

of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b17) Service Retirement Allowance of Member Retiring on or After July 1, 1998, but before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1998, but before July 1, 2000, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b17)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b17)(1)a. reduced by five percent (5%) times the

difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b17)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b17)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b18) Service Retirement Allowance of Member Retiring on or After July 1, 2000, but Before July 1, 2001. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2001, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of his average final

compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b18)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;

2. The service retirement allowance as computed under G.S. 128-27(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-eight hundredths percent (1.78%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b18) (2) a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b18)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b19) Service Retirement Allowance of Member Retiring on or After July 1, 2001, But Before July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2001, but before July 1, 2002, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b19)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;

2. The service retirement allowance as computed under G.S. 128-27(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b19)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b19)(2)a. but reduced by the sum of five-twelfths of

one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b19)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b20) Service Retirement Allowance of Member Retiring on or After July 1, 2002, but Before July 1, 2003. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, but before July 1, 2003, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b20)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;

2. The service retirement allowance as computed under G.S. 128-27(b20)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b20)(2) a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b20)(2)a. but reduced by the sum of five-twelfths of one percent ($^{5}0/1_{2}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b20)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b20)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(b21) Service Retirement Allowance of Member Retiring on or After July 1, 2003. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2003, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 128-27(b21)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday;

2. The service retirement allowance as computed under G.S. 128-27(b21)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-five hundredths percent (1.85%) of average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b21)(2) a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b21)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b21)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b).

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further

the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring prior to July 1, 1965. — Upon retirement for disability, in accordance with subsection (c) above, prior to July 1, 1965, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;

(2) A pension equal to seventy-five percent (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1965, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1965, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, and uniformed policemen or firemen not covered under the Social Security Act employed thereafter, shall receive not less than the benefit provided by G.S. 128-27(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 128-27(d2);

b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a

disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired on Account of Disability. — Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability retirement and his age at the time of conversion to service retirement. This election is irrevocable.

The provisions of this subdivision shall not apply to beneficiaries of the Law Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 62 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System and he shall contribute thereafter at the contribution rate which is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance prescribed in a below reduced by the amount in b below.

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 240 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

The Director of the State Retirement Systems shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law Enforcement Officers' Retirement System and becomes employed as an employee other than as a law enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this section.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to

the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

(f1) Notwithstanding the foregoing provisions, upon or after retirement any member who was a uniformed fireman and any surviving beneficiary of a member who was a uniformed fireman, shall upon submission of an application, be paid the sum of accumulated contributions, with regular interest thereon, made under those provisions of G.S. 128-30(b)(1) that applied from July 1, 1965, through June 30, 1971, to the extent of the contributions required of the member that were in excess of the contributions required of other members of the Local Governmental Employees' Retirement System covered under the Social Security Act as was from time to time in effect; provided that, the return of contributions shall be payable only if the contributions did not increase the retirement allowance of the member or surviving beneficiary under the provisions of this Chapter.

(f2) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options two, three, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option one. (a) In the Case of a Member Who Retires prior to July 1, 1965. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.

(b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Table II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less $\frac{1}{120}$th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement

allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of Chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the Board of Trustees may adopt, the provisions of Chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(j) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits, to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%

Period in Which Benefits Commenced	Percentage
Year 1964	7%
Year 1963	8%
Year 1962	9%
Year 1961	10%
Year 1960	11%
Year 1959	12%
Year 1958	13%
Year 1957	14%
Year 1956	15%
Year 1955	16%
Year 1954	17%
Year 1953	18%
Year 1952	19%
Year 1951	20%
Year 1950	21%
Year 1949	22%
Year 1948	23%
Year 1947	24%
Year 1946	25%

The minimum increase pursuant to this subsection (j) shall be five dollars ($5.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to a retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(k) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971, as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum (1/10 of 1%), but not more than four per centum (4%); provided that any such increase in allowances shall be contingent upon the total fund providing

sufficient investment gains to cover the additional actuarial liabilities on account of such increase.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

(l) Death Benefit Plan. — The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

subject to a minimum of twenty-five thousand dollars ($25,000) and a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After June 30, 1969 and after he has attained age 70; or
(2) After December 31, 1969 and after he has attained age 69; or
(3) After December 31, 1970 and after he has attained age 68; or
(4) After December 31, 1971 and after he has attained age 67; or
(5) After December 31, 1972 and after he has attained age 66; or
(6) After December 31, 1973 and after he has attained age 65; or
(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died ordies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time

of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

a. When employment has been terminated, the last day the member actually worked.

b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).

(4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan.

(*l*1) Death Benefit Plan for Law Enforcement Officers. — Under all requirements and conditions as otherwise provided for in subsection (*l*), except for the requirement that the provisions are effective only after an agreement has been executed by the employer and the Director of the Retirement System, all law enforcement officers who are members of the Retirement System shall participate and be eligible for group life insurance benefits under the Plan, and employers shall fund the cost of these benefits.

(*l*2) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's

legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*3) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*4) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month

following the date of his death, provided that all three of the following conditions apply:

(1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b21)(1)b. or G.S. 128-27(b21)(2)c., notwithstanding the requirement of obtaining age 50, or

c. The member had not commenced to receive a retirement allowance as provided under this Chapter.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable serviceas provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

(n) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1965, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1965 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971 have been increased to the extent provided for in subsection (k) above.

(o) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1969. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1969, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1959 through 1968	10
1946 through 1958	25

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (k).

(p) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (k).

(q) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(r) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(s) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 128-27(k) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 128-27(k). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(t) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1965, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1965, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(u) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 128-27(k), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2 ½%) for the year beginning July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(v) Increases in Allowances Paid Beneficiaries Retired prior to July 1, 1976. — From and after July 1, 1978, the monthly allowances paid to or on account of beneficiaries who commenced receiving such allowances prior to July 1, 1976, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly allowances, as of July 1, 1978, have been increased to the extent provided for in the preceding subsections (k) and (u). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 128-27(k), shall be five percent (5%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(x) Increases in Benefits to Those Persons Who Were Retired prior to July 1, 1978. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1978, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	*Percentage*
On or before June 30, 1959	10%
July 1, 1959, to June 30, 1968	7%
July 1, 1968, to June 30, 1978	2%

This increase shall be calculated independent of any other post-retirement increase, without compounding, otherwise payable from and after July 1, 1980.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1980, which shall become payable on January 1, 1982, as otherwise provided in G.S. 128-27(h), shall be the percentage available therefrom plus an additional six and six-tenths percent (6.6%); provided that in no case shall the increase exceed a total of seven percent (7%). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of the beneficiary.

(z) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary as of July 1, 1983, which shall become payable on July 1, 1984, shall be three and eight-tenths percent (3.8%) as provided in G.S. 128-27(k) plus an additional four and two-tenths percent (4.2%) to a total of eight percent (8%). The provision of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System.

(z1) Notwithstanding the foregoing provisions, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(aa) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable on allowances in effect on June 30, 1985.

(bb) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987,

the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(dd) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(ee) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the

allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(jj) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(kk) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(*ll*) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(mm) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1993 General Assembly in 1994.

(nn) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by two and eight-tenths percent (2.8%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of two and eight-tenths percent (2.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(oo) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined

by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(pp) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1995 General Assembly.

(qq) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by seven-tenths of one percent (0.7%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of seven-tenths of one percent (0.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(rr) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 128-27(k). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ss) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(uu) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1998. — From and after July 1, 1998, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1998, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1998. This allowance shall be calculated on the allowance payable and in effect on June 30, 1998, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly.

(ww) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by one percent (1.0%) of the allowance payable on June 1, 1999, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of one percent (1.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000. — From and after July 1, 2000, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1,2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1999 General Assembly, 2000 Regular Session.

(yy) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on June 1, 2000, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(zz) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2001. — From and after July 1, 2001, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2001, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2001. This allowance shall be calculated on the allowance payable and in effect on June 30, 2001, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2001 General Assembly.

(bbb) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with subsection (k) of this section. Furthermore,

from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(ccc) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2002 Regular Session of the 2001 General Assembly.

(ddd) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by two percent (2.0%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of two percent (2.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(eee) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before June 1, 1982, shall be increased by six percent (6.0%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or after July 1, 1982, but before July 1, 1993, shall be increased by one and one-tenth percent (1.1%) of the allowance payable on June 1, 2003, in accordance with subsection (k) of this section. This allowance shall be calculated on the allowance payable and in effect on June 30, 2003, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2003 Regular Session of the 2003 General Assembly.

(fff) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2003. — From and after July 1, 2003, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2003, shall be increased by one and one-half percent (1.5%) of the allowance payable on June 1, 2003. This allowance shall be calculated on the allowance payable and in effect on June 30, 2003, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 2003 General Assembly. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2; 1987 (Reg. Sess., 1988), c. 1061, s. 2; c. 1086, s. 22(c); c. 1108, s. 3; c. 1110, ss. 4-7; 1989, c. 717, ss. 13, 13.1; c. 731, s.

2; c. 752, s. 41(c); c. 792, ss. 3.4-3.6; 1989 (Reg. Sess., 1990), c. 1077, ss. 13-16; c. 1080; 1991, c. 636, s. 20(a); 1991 (Reg. Sess., 1992), c. 766, s. 1; c. 900, ss. 52(e)-(g), 53(a); c. 929, s. 1; c. 1030, s. 51.1; 1993, c. 321, ss. 74(b), 74.1(c), (d); c. 531, s. 3; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(b)-(d), (l); 1995, c. 507, ss. 7.22(e), (f), 7.23(c), (d), 7.23A(c); 1996, 2nd Ex. Sess., c. 18, s. 28.21(d); 1997-443, s. 33.22(g)-(j); 1998-153, s. 21(d)-(h); 1998-212, ss. 28.26(b), 28.27(e), (f); 1999-237, s. 28.23(d); 2000-67, ss. 26.20(g)-(j); 2001-424, ss. 32.22(d), 32.23(a)-(d); 2001-435, s. 1; 2002-126, ss. 28.8(b), 28.9(e)-(h); 2003-319, ss. 1-4; 2003-359, ss. 15, 16, 21; 2004-136, s. 1; 2004-147, ss. 2, 3.)

Effect of Amendments. —

Session Laws 2004-136, s. 1, effective July 1, 2004, and applicable to persons dying on or after that date, substituted "minimum of twenty-five thousand dollars ($25,000) and a maximum of fifty thousand dollars ($50,000)" for "maximum of twenty thousand dollars ($20,000)" following subdivision (3) in the first full paragraph; and substituted "be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000)" for "exceed twenty thousand dollars ($20,000)" in subdivision (4) of the fifth full paragraph.

Session Laws 2004-147, ss. 2 and 3, effective July 1, 2004, and applicable to persons dying on or after that date, inserted "but before July 1, 2004," in subsection (*l*3) and added subsection (*l*4).

Chapter 130A.

Public Health.

Article 1.

Definitions, General Provisions and Remedies.

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Article 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-1. Title.

Editor's Note. —

Session Laws 2004-124, s. 10.1, provides: "The Department of Health and Human Services shall centralize all activities throughout the Department relating to the coordination and processing of criminal record checks required by law. The centralization shall include the transfer of positions, corresponding State appropriations, federal funds, and other funds. The Department shall implement the centralization beginning January 1, 2005, and shall report on the details of the centralization and implementation to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than January 1, 2005."

Session Laws 2004-124, ss. 10.2C(a)-(d), provides: "(a) Based upon information gathered by the Department of Health and Human Services in conducting the recently completed department-wide examination and analysis of the Department's information technology infrastructure, including IT expenditures and management structure, the Department shall complete planning and begin implementation of those plans to consolidate management of all IT operations, services, and functions that are common to and necessary in all divisions, offices, and programs of the Department.

"(b) The consolidation and implementation should place emphasis on improving successful and timely implementation of IT projects and ongoing maintenance within the Department while eliminating duplication of efforts and equipment, controlling the use of personal service contracts, establishing continuity in process and systems development, strengthening systems security, coordinating and overseeing all IT efforts within the Department, and identifying other efficiencies. The plan for consolidation of these IT functions shall be implemented in a manner that will allow for the maintenance of a complete accounting of IT efforts within the Department and the costs

related to those efforts, including identification of funding needs. The plan should set forth the management and operational structure of the consolidated IT function, including how the structure will enhance IT operations and efficiency within the Department.

"(c) The Department shall restrictthe future creation or filling of any IT-related position within any departmental division, office, or program when the function of the position is determined under the consolidation plan to be properly placed or managed within the consolidated IT function.

"(d) The consolidation plan, including time lines for implementation, shall be submitted to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division upon completion, but not later than October 1, 2004. The Department shall provide a report on the progress of implementation of the consolidation plan to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2005."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 130A-2. Definitions.

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) "Commission" means the Commission for Health Services.

(1a) "Communicable condition" means the state of being infected with a communicable agent but without symptoms.

(1b) "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.

(2) "Department" means the Department of Health and Human Services.

(3) "Imminent hazard" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(3a) "Isolation authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals that are infected or reasonably suspected to be infected with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.

(4) "Local board of health" means a district board of health or a public health authority board or a county board of health.

(5) "Local health department" means a district health department or a public health authority or a county health department.

(6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.

(6a) "Outbreak" means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.

(7) "Person" means an individual, corporation, company, association, partnership, unit of local government or other legal entity.

(7a) "Quarantine authority" means the authority to issue an order to limit the freedom of movement or action of persons or animals which have

been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to issue an order to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(8) "Secretary" means the Secretary of Health and Human Services.

(9) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) "Vital records" means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6; 1967, c. 343, s. 2; c. 1257, s. 1; 1973, c. 476, s. 128; 1975, c. 751, s. 1; 1981, c. 130, s. 1; c. 340, ss. 1-4; 1983, c. 891, s. 2; 1989, c. 727, s. 141; 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 631, s. 1; 1997-443, s. 11A.55; 1997-502, s. 2(a), (b); 2002-179, s. 4; 2004-80, s. 1.)

Effect of Amendments. — Session Laws 2004-80, s. 1, effective July 8, 2004, substituted "persons or animals that are infected or reasonably suspected to be infected" for "a person or animal" in subdivision (3a).

§ 130A-12. Confidentiality of records.

All records containing privileged patient medical information or information protected under 45 C.F.R. Parts 160 and 164 that are in the possession of the Department or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 C.F.R. § 164.501. (1985, c. 470, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 9; 1995, c. 428, s. 1.1; 2004-80, s. 4.)

Effect of Amendments. — Session Laws 2004-80, s. 4, effective July 8, 2004, inserted "or information protected under 45 C.F.R. Parts 160 and 164" in the first sentence; and added the second through fourth sentences.

Part 2. Remedies.

§ 130A-24. Appeals procedure.

CASE NOTES

"Aggrieved person." — G.S. 19A-1 and G.S. 19A-2 express the General Assembly's intent that the broadest category of persons or organizations be deemed "[a] real party in interest" when contesting cruelty to animals; thus, animal welfare advocates who filed an action challenging an animal control facility's euthanasia procedures and record-keeping were "aggrieved persons" entitled to proceed under G.S. 130A-24 where, under G.S. 19A-1, the General

Assembly viewed "persons" such as the advocates to be real parties in interest for the purpose of litigation in court and where the claims concerned the enforcement of rules adopted by the local board of health. Justice for Animals, Inc. v. Robeson County, — N.C. App. —, 595 S.E.2d 773, 2004 N.C. App. LEXIS 813 (2004).

Article 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

Pilot Process for Local Health Departments. — Session Laws 2004-124, ss. 10.28B(a)-(g), provides: "(a) The Department of Health and Human Services shall expand the pilot accreditation process for local health departments to include additional counties.

"(b) The Pilot Accreditation Advisory Board (hereafter 'Advisory Board') is established within the North Carolina Institute for Public Health. The Advisory Board shall be composed of 15 members appointed by the Secretary of Health and Human Services as follows:

"(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local board of health as recommended by the North Carolina Association of Local Boards of Health.

"(2) Two local health directors.

"(3) One staff member from the Department of Health and Human Services, Division of Public Health.

"(4) Three members at large.

"(5) One recommended by the Secretary of Environment and Natural Resources, from the Division of Environmental Health.

"(c) Members of the Advisory Board who are not officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Advisory Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

"(d) The Advisory Board shall evaluate the Department's pilot accreditation process for local health departments, including the following:

"(1) The standards by which the pilot local health departments are judged.

"(2) The self-assessment process used by the pilot counties.

"(3) The process for local site reviews and appeals.

"(4) The makeup of the proposed State accrediting entity and its relationship to the Department.

"(5) The cost of meeting the accreditation standards in the pilot counties.

"(e) Of the funds appropriated in this act to the Department of Health and Human Services the sum of fifty thousand dollars ($50,000) for the 2004-2005 fiscal year shall be allocated for administrative costs and for activities of the Pilot Accreditation Advisory Board for the accreditation of additional local health departments. The Department shall contract with the Institute for Public Health, which shall be responsible for implementation of the pilot accreditation process.

"(f) Not later than April 1, 2005, the Pilot Accreditation Advisory Board shall report its findings to the Director of the Institute for Public Health, the Secretary of the Department of Health and Human Services, and the co-chairs of the House and Senate Appropriations Committees for Health and Human Services.

"(g) The North Carolina Public Health Task Force 2004 shall continue its work on the Public Health Improvement Plan and in its final report to the General Assembly shall include comparisons of the recommendations of the Task Force with the Model State Public Health Act, Public Health Statute Modernization National Excellence Collaborative, September 2003."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 5.

Maternal and Child Health and Women's Health.

Part 1. In General.

§ 130A-125. Screening of newborns for metabolic and other hereditary and congenital disorders.

Editor's Note. —

Session Laws 2004-124, s. 5.1(bb), provides: "The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 6.

Communicable Diseases.

Part 1. In General.

§ 130A-141.1. Temporary order to report.

(a) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or symptoms that may indicate the existence of a communicable disease or condition that presents a danger to the public health. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(b) For the purposes of this section, the term "health care provider" has the same meaning as that term is defined in G.S. 130A-476(g). (2004-80, s. 5.)

Editor's Note. — Session Laws 2004-80, s. 8, made this section effective July 8, 2004.

§ 130A-144. Investigation and control measures.

(a) The local health director shall investigate, as required by the Commission, cases of communicable diseases and communicable conditions reported to the local health director pursuant to this Article.

(b) Physicians and persons in charge of medical facilities or laboratories shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical or other records in their possession or under their control which the State Health Director or a local health director determines pertain to the (i) diagnosis,

treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition, or (ii) the investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.

(c) A physician or a person in charge of a medical facility or laboratory who permits examination, review or copying of medical records pursuant to subsection (b) shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with a request made pursuant to subsection (b).

(d) The attending physician shall give control measures prescribed by the Commission to a patient with a communicable disease or communicable condition and to patients reasonably suspected of being infected or exposed to such a disease or condition. The physician shall also give control measures to other individuals as required by rules adopted by the Commission.

(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health. The local health department shall provide, at no cost to the patient, the examination and treatment for tuberculosis disease and infection and for sexually transmitted diseases designated by the Commission.

(f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13.

(h) Anyone who assists in an inquiry or investigation conducted by the State Health Director for the purpose of evaluating the risk of transmission of HIV or Hepatitis B from an infected health care worker to patients, or who serves on an expert panel established by the State Health Director for that purpose, shall be immune from civil liability that otherwise might be incurred or imposed for any acts or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful or wanton misconduct, or intentional wrongdoing. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. Nothing in this subsection provides immunity from liability for a violation of G.S. 130A-143. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8; C.S., s. 7158; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 782, s. 14; 1991, c. 225, s. 1; 1995, c. 228, s. 1; 2001-28, s. 2; 2004-80, s. 6.)

Effect of Amendments. — Session Laws 2004-80, s. 6, effective July 8, 2004, in subsection (b), inserted "or other" preceding "records," "the State Health Director or a local health director determines" preceding "pertain," and added subdivision (ii).

§ 130A-145. Quarantine and isolation authority.

(a) The State Health Director and a local health director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(b) No person other than a person authorized by the State Health Director or local health director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the State Health Director or a local health director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. The official who exercises the quarantine or isolation authority shall give the persons known by the official to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director or local health director must institute in superior court in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. Except as provided below for persons with tuberculosis, the court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each. If the person whose freedom of movement has been limited has tuberculosis, the court shall continue the limitation for a period not to exceed one calendar year if it determines, by a preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the

conveyance of tuberculosis to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order limiting the freedom of movement of a person with tuberculosis, the State Health Director or local health director may move to continue the order for additional periods not to exceed one calendar year each. (1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1987, c. 782, s. 15; 2002-179, s. 5; 2004-80, s. 2.)

Effect of Amendments. — Session Laws 2004-80, s. 2, effective July 8, 2004, in subsection (d), in the first paragraph, substituted "30" for "10" in the first sentence, added the third sentence and substituted "or terminate the limitation unless" for "the limitation if" in the last sentence; and in the second paragraph, substituted "30-calendar-day" for "10-calendar-day" in the first sentence, added "or as a counterclaim in the pending case" at the end of the second sentence, inserted the exception at the beginning of the third sentence, and added the fourth, fifth, and seventh through tenth sentences.

Part 6. Rabies.

§ 130A-192. Dogs and cats not wearing required rabies vaccination tags.

CASE NOTES

Cited in Justice for Animals, Inc. v. Robeson County, — N.C. App. —, 595 S.E.2d 773, 2004 N.C. App. LEXIS 813 (2004).

Article 8.

Sanitation.

Part 9. Milk Sanitation.

§ 130A-274. Definitions.

The following definitions shall apply throughout this Part:

(1) "Grade 'A' milk" means fluid milk and milk products which have been produced, transported, handled, processed and distributed in accordance with the provisions of the rules adopted by the Commission.

(2) "Milk" means the lacteal secretion practically free from colostrum obtained by the milking of one or more cows, goats, or other lactating animals. (1983, c. 891, s. 2; 2004-195, s. 6.1.)

Effect of Amendments. — Session Laws 2004-195, s. 6.1, effective August 17, 2004, in subdivision (2), deleted "complete" preceding "milking" and substituted "cows, goats, or other lactating animals" for "cows or goats."

§ 130A-279. Sale or dispensing of milk.

Only milk that is Grade "A" pasteurized milk may be sold or dispensed directly to consumers for human consumption. Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency. The Commission may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. "Sale" or "sold" shall mean any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd. (1983, c. 891, s. 2; 2004-195, s. 6.2.)

Effect of Amendments. — Session Laws 2004-195, s. 6.2, effective August 17, 2004, inserted "or dispensing" in the section heading; and rewrote the section.

Part 12. Decontamination Standards for Methamphetamine Sites.

§ 130A-284. Decontamination of property used for the manufacture of methamphetamine.

For the protection of the public health, the Commission shall adopt rules establishing decontamination standards to ensure that certain property is reasonably safe for habitation. An owner, lessee, operator or other person in control of a residence or place of business or any structure appurtenant to a residence or place of business, and who has knowledge that the property has been used for the manufacture of methamphetamine, shall comply with these rules. For purposes of this section, the terms "residence" and "place of business" shall be defined as set forth in G.S. 130A-334. (2004-178, s. 7.)

Editor's Note. — Session Laws 2004-178, s. 10, made this section effective January 1, 2005.

Article 10.

North Carolina Drinking Water Act.

§ 130A-315. Drinking water rules.

(a) The Commission shall adopt and the Secretary shall enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.

(b) The rules shall:

(1) Specify contaminants which may have an adverse effect on the public health;

(2) Specify for each contaminant either:

a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of the contaminant in water in public water systems; or

b. One or more treatment techniques which lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system; and

(3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2) of this subsection. These rules may provide for:

a. The minimum quality of raw water which may be taken into a public water system;
b. A program of laboratory certification;
c. Monitoring and analysis;
d. Record-keeping and reporting;
e. Notice of noncompliance, failure to perform monitoring, variances and exemptions;
f. Inspection of public water systems; inspection of records required to be kept; and the taking of samples;
g. Criteria for design and construction of new or modified public water systems;
h. Review and approval of design and construction of new or modified public water systems;
i. Siting of new public water system facilities;
j. Variances and exemptions from the drinking water rules; and
k. Additional criteria and procedures as may be required to carry out the purpose of this Article.

(b1) The rules may also establish criteria and procedures to insure an adequate supply of drinking water. The rules may:

(1) Provide for record keeping and reporting.
(2) Provide for inspection of public water systems and required records.
(3) Establish criteria for the design and construction of new public water systems and for the modification of existing public water systems.
(4) Establish procedures for review and approval of the design and construction of new public water systems and for the modification of existing public water systems.
(4a) Limit the number of service connections to a public water system based on the quantity of water available to the public water system, provided that the number of service connections shall not be limited for a public water system operating in accordance with a local water supply plan that meets the requirements of G.S. 143-355(*l*).
(5) Establish criteria and procedures for siting new public water systems.
(6) Provide for variances and exemptions from the rules.
(7) Provide for notice of noncompliance in accordance with G.S. 130A-324.

(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems.

(b3) The Department shall not certify or renew a certification of a laboratory under rules adopted pursuant to subdivision (3)b. of subsection (b) of this section unless the laboratory offers to perform composite testing of samples taken from a single public water supply system for those contaminants that

the laboratory is seeking certification or renewal of certification to the extent allowed by regulations adopted by the United States Environmental Protection Agency.

(c) The drinking water rules may be amended as necessary in accordance with required federal regulations.

(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to charge for the costs of providing water or sewer service, that person shall not be subject to regulation under this Article solely as a result of submetering and billing for water service. The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the providing water system had not been authorized to charge for the costs of providing water or sewer service pursuant to G.S. 62-110(g).

(e) When a public water system supplies water through a master meter to a water system not regulated by this Article, the supplying water system is not responsible for operation, maintenance, or repair of the providing water system. The supplying water system shall not be responsible for contamination that is confined to the providing water system if the supplying water system meets applicable requirements for water quality, treatment, and system operation for that contaminant. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department shall have access to the providing water system to investigate water quality problems and to determine whether any contamination is confined to the providing water system and whether the quality of the water supplied by the supplying water system is contributing contamination to the providing water system.

(f) If water in the providing water system exceeds the maximum contaminant levels established pursuant to this Article and the Department determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 417, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 826, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 15; 1995, c. 25, s. 1; 2000-172, s. 1.1; 2001-502, s. 6; 2004-143, s. 8.)

Effect of Amendments. — Session Laws 2004-143, s. 8, effective August 1, 2004, rewrote subsection (d), and added subsections (e) and (f).

Article 11.

Wastewater Systems.

§ 130A-333. Purpose.

Editor's Note. —

Session Laws 2004-140, s. 1, provides: "A subsurface wastewater disposal system shall be located the maximum feasible horizontal distance, but not less than 10 feet from any other subsurface wastewater disposal system, when all of the following conditions are met:

"(1) The lot or tract of land on which the system will be located is specifically described in a deed, other instrument conveying fee simple title, or on a plat recorded prior to 1 July 1977.

"(2) The lot or tract of land is of insufficient size to allow the minimum horizontal separation distance for a conventional wastewater system required in 15A NCAC 18A.1950.

"(3) The system will receive sewage from only one single-family residence not to exceed four bedrooms.

"(4) The residence is not capable of being

served by a public or community wastewater system at the time construction of the system commences.

"(5) The system will be installed in sand or loamy sand soils as defined in 15A NCAC 18A.1935 and installed in accordance with rules adopted pursuant to Article 11 of Chapter 130A of the General Statutes."

Session Laws 2004-140, s. 2, provides: "The Commission for Health Services may adopt rules that incorporate the provisions of Section 1 of this act [Session Laws 2004-140]. Except as provided by Section 1 of this act [Session Laws 2004-140], this act [Session Laws 2004-140] does not limit the authority of the Commission for Health Services or the Environmental Management Commission to adopt rules governing the location, construction, operation, maintenance, or repair of subsurface wastewater disposal systems pursuant to G.S. 130A-335 or other provisions of Article 11 of Chapter 130A of the General Statutes."

§ 130A-335. Wastewater collection, treatment and disposal; rules.

Editor's Note. — Session Laws 2004-140, s. 1, provides: "A subsurface wastewater disposal system shall be located the maximum feasible horizontal distance, but not less than 10 feet from any other subsurface wastewater disposal system, when all of the following conditions are met:

"(1) The lot or tract of land on which the system will be located is specifically described in a deed, other instrument conveying fee simple title, or on a plat recorded prior to 1 July 1977.

"(2) The lot or tract of land is of insufficient size to allow the minimum horizontal separation distance for a conventional wastewater system required in 15A NCAC 18A.1950.

"(3) The system will receive sewage from only one single-family residence not to exceed four bedrooms.

"(4) The residence is not capable of being served by a public or community wastewater system at the time construction of the system commences.

"(5) The system will be installed in sand or loamy sand soils as defined in 15A NCAC 18A.1935 and installed in accordance with rules adopted pursuant to Article 11 of Chapter 130A of the General Statutes."

Session Laws 2004-140, s. 2, provides: "The Commission for Health Services may adopt rules that incorporate the provisions of Section 1 of this act [Session Laws 2004-140]. Except as provided by Section 1 of this act [Session Laws 2004-140], this act [Session Laws 2004-140] does not limit the authority of the Commission for Health Services or the Environmental Management Commission to adopt rules governing the location, construction, operation, maintenance, or repair of subsurface wastewater disposal systems pursuant to G.S. 130A-335 or other provisions of Article 11 of Chapter 130A of the General Statutes."

Article 22.

A Terrorist Incident Using Nuclear, Biological, or Chemical Agents.

§ 130A-475. Suspected terrorist attack.

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director is authorized to order any of the following:

(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.

(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.

(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a longer period of closure is necessary to complete the investigation,

the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.

(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals.

(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals. Nothing in this subdivision shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute, in superior court in Wake County or in the county in which the limitation is imposed, an action to review the limitation. The State Health Director shall give the persons known by the State Health Director to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical or nuclear agents to others, and may apply such conditions to thelimitation as the court deems reasonable and necessary.

If the State Health Director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director must institute in superior court in the county in which the limitation is imposed, an action to obtain an order extending the period limiting the freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. The court shall continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable and necessary, if it determines by the preponderance of the evidence, that additional limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical, or nuclear agents to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by

the State Health Director or local health director that the limitation on freedom of movement or access is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that the limitation on freedom of movement or access was not or is no longer needed for protection of the public health, the person so limited may move the trial court to reconsider its order extending the limitation on freedom of movement or access before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director reasonably suspects that there exists a public health threat that may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director shall notify the Governor and the Secretary of Crime Control and Public Safety. If the Secretary of Crime Control and Public Safety reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Secretary shall notify the Governor and the State Health Director.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter. (2002-179, s. 1; 2004-80, s. 3; 2004-199, s. 33.)

Effect of Amendments. — Session Laws 2004-80, s. 3, effective July 8, 2004, in subsection (b), in the second paragraph, substituted "30 calendar days" for "10 calendar days" in the first sentence, inserted the third sentence, and in the last sentence, substituted "or terminate the limitation unless" for "the limitation if" and deleted "not" preceding "reasonably," and in the third paragraph, substituted "30-calendar day" for "10-calendar day" in the first sentence, added "or as a counterclaim in the pending case" at the end of the second sentence, and added the fourth and fifth sentences.

Session Laws 2004-199, s. 33, effective August 17, 2004, in the third paragraph of subsection (b), substituted "limitation on freedom of movement or access" for "quarantine or isolation" in the fourth sentence, and in the fifth sentence, substituted "the limitation on freedom of movement or access" for "quarantine or isolation" twice, and "so limited" for "quarantined or isolated."

§ 130A-476. Access to health information.

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. Notwithstanding the foregoing, if a health care provider or unit of State or local government willfully does not disclose information pursuant to this

subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) Health care providers and persons in charge of health care facilities or laboratories shall, upon request and proper identification, permit the State Health Director or a local health director to examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, (i) that pertain to a report authorized by subsection (a) or required by subsection (b) of this section, or (ii) that, in the opinion of the State Health Director or local health director, are necessary for an investigation of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review, or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

(1) Made pursuant to any other provision of law;

(2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or

(3) To a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a terrorist incident using nuclear, biological, or chemical agents. A court or law enforcement official or law enforcement officer who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the court or law enforcement official or law enforcement officer in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

(f) Repealed by Session Laws 2004-124, s. 10.34(a), effective January 1, 2005.

(g) In this section the following terms shall include:

(1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and

(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned. (2002-179, s. 1; 2004-80, s. 7; 2004-124, s. 10.34(a).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-80, s. 7, effective July 8, 2004, rewrote subsection (c).

Session Laws 2004-124, s. 10.34(a), effective January 1, 2005, repealed subsection (f).

§ 130A-480. Emergency department data reporting.

(a) For the purpose of ensuring the protection of the public health, the State Health Director shall develop a syndromic surveillance program for hospital emergency departments in order to detect and investigate public health threats that may result from (i) a terrorist incident using nuclear, biological, or chemical agents or (ii) an epidemic or infectious, communicable, or other disease. The State Health Director shall specify the data to be reported by hospitals pursuant to this program, subject to the following:

(1) Each hospital shall submit electronically available emergency department data as specified by rule by the Commission. The Commission, in consultation with hospitals, shall establish by rule a schedule for the implementation of full electronic reporting capability of all data elements by all hospitals. The schedule shall take into consideration the number of data elements already reported by the hospital, the hospital's capacity to electronically maintain the remaining elements, available funding, and other relevant factors.

(2) None of the following data for patients or their relatives, employers, or household members may be collected by the State Health Director: names; postal or street address information, other than town or city, county, state, and the first five digits of the zip code; geocode information; telephone numbers; fax numbers; electronic mail addresses; social security numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators (URLs); Internet protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

(b) The following are not public records under Chapter 132 of the General Statutes and are privileged and confidential:

(1) Data reported to the State Health Director pursuant to this section.

(2) Data collected or maintained by any entity with whom the State Health Director contracts for the reporting, collection, or analysis of data pursuant to this section.

The State Health Director shall maintain the confidentiality of the data reported pursuant to this section and shall ensure that adequate measures are taken to provide system security for all data and information. The State Health Director may share data with local health departments for public health purposes, and the local health departments are bound by the confidentiality provisions of this section. The State Health Director shall not allow information that it receives pursuant to this section to be used for commercial purposes and shall not release data except as authorized by other provisions of law.

(c) A person is immune from liability for actions arising from the required submission of data under this Article.

(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital subject to Article 2 of Chapter 122C of the General Statutes.

(e) Administrative emergency department data shall be reported by hospitals under Article 11A of Chapter 131E of the General Statutes. (2004-124, s. 10.34(b).)

Editor's Note. — Session Laws 2004-124, s. 10.34(b), made this section effective January 1, 2005.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Chapter 131D.

Inspection and Licensing of Facilities.

Article 3.

Adult Care Home Residents' Bill of Rights.

Sec.
131D-21.2. Quality assurance, medical, or peer review committees.

Article 5.

Miscellaneous Provisions.

Sec.
131D-40. Criminal history record checks required for certain applicants for employment.

Article 3.

Adult Care Home Residents' Bill of Rights.

§ 131D-21.2. Quality assurance, medical, or peer review committees.

(a) A member of a duly appointed quality assurance, medical, or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131D-21.1.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings. (2004-149, s. 2.3.)

Editor's Note. — Session Laws 2004-149, s. 4.1, made this section effective August 2, 2004.

Article 5.

Miscellaneous Provisions.

§ 131D-40. Criminal history record checks required for certain applicants for employment.

(a) Requirement; Adult Care Home. — An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G. S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Division of Facility Services. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Division of Facility Services, shall provide to the adult care home the results of the national criminal history check. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. — An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Division of Facility Services.

Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Division of Facility Services, shall provide to the contract agency of the adult care home the results of the national criminal history check. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the adult care home or a contract agency of the adult care home shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. — An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. — As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and

alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(e) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. — An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The adult care home shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. — An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section. (1995 (Reg. Sess., 1996), c. 606, s. 2; 1997-125, s. 1; 2000-154, ss. 2.(a), (b); 2004-124, ss. 10.19D(b), (g).)

Editor's Note. —

Session Laws 2004-124, s. 10.19D(i), provides: "Subsections (a) through (c) of this section become effective January 1, 2005. The remainder of this section becomes effective July 1, 2004."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, ss. 10.19D(b) and (g), inserted the three sentences preceding the last sentence in both subsection (a) and (a1); and substituted "county, state, or federal criminal history of conviction or pending indictment of a crime" for "State crime" at the beginning of subsection (d). See editor's note for effective dates.

Chapter 131E.

Health Care Facilities and Services.

Article 5.

Hospital Licensure Act.

Part 1. Article Title and Definitions.

Sec.
131E-76. Definitions.

Part 5. Medical Review Committee.

131E-95. Medical review committee.

Article 6.

Health Care Facility Licensure Act.

Part 1. Nursing Home Licensure Act.

131E-101. Definitions.
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Article 15.

Health Care Personnel Registry.

Sec.
131E-256. Health Care Personnel Registry.

Article 16.

Miscellaneous Provisions.

131E-265. Criminal history record checks required for certain applicants for employment.

Article 5.

Hospital Licensure Act.

Part 1. Article Title and Definitions.

§ 131E-76. Definitions.

As used in this article, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(1a) "Critical access hospital" means a hospital which has been designated as a critical access hospital by the North Carolina Department of Health and Human Services, Office of Research, Demonstrations and Rural Health Development. To be designated as a critical access hospital under this subdivision, the hospital must meet the requirements of federal law for certification as a critical access hospital.

(2) "Governing body" means the Board of Trustees, Board of Directors, partnership, corporation, association, person or group of persons who maintain and control the hospital. The governing body may or may not be the owner of the properties in which the hospital services are provided.

(3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and adult care homes licensed under G.S. 131D-2.

(4) "Infirmary" means a unit of a school, or similar educational institution, which has the primary purpose to provide limited short-term health and nursing services to its students.

(5) "Medical review committee" means any of the following committees formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing:

a. A committee of a state or local professional society.

b. A committee of a medical staff of a hospital.

c. A committee of a hospital or hospital system, if created by the governing board or medical staff of the hospital or system or operating under written procedures adopted by the governing board or medical staff of the hospital or system.

d. A committee of a peer review corporation or organization.

(6) Renumbered.

(7) "Rural hospital network" means an alliance of members that shall include at least one critical access hospital and one other hospital. To qualify as a rural hospital network, the critical access hospital must submit a comprehensive, written memorandum of understanding to the Department of Health and Human Services, Office of Research, Demonstrations and Rural Health Development, for the Department's approval. The memorandum of understanding must include provisions for patient referral and transfer, a plan for network-wide emergency services, and a plan for sharing patient information and services between hospital members including medical staff credentialing, risk management, quality assurance, and peer review. (1947, c. 933, s. 6; 1949, c. 920, s. 1; 1955, c. 369; 1961, c. 51, s. 1; 1973, c. 476, s. 152; 1983, c. 775, s. 1; 1985, c. 589, s. 41; 1993, c. 321, s. 245; 1995, c. 535, s. 20; 1997-443, s. 11A.118(a); 2004-149, ss. 1.1, 2.4; 2004-199, s. 49.)

Editor's Note. — Session Laws 2004-161, ss. 34.1 through 34.5, create the Health Care Workforce Study Commission. The Commisssion is to report its findings to the 2006 Regular Session of the 2005 General Assembly and will terminate upon the earlier of the filing of the final report or April 30, 2006. Section 34.2 of Session Laws 2004-161 provides: "The purpose of the Commission is to determine methods to increase the number of people providing health and dental care in this State and to overcome existing barriers contributing to the health care provider shortages."

Effect of Amendments. — Session Laws 2004-149, ss. 1.1 and 2.4, as amended by Session Laws 2004-199, s. 49, effective August 2, 2004, rewrote and renumbered the subdivision designated herein as (1a); rewrote subdivision (5); and in the first sentence of subdivision (7), substituted "critical access hospital" for "primary care hospital" and "members," and inserted "Office of Research, Demonstrations, and Rural Health Development."

Part 5. Medical Review Committee.

§ 131E-95. Medical review committee.

(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a hospital, an ambulatory surgical facility licensed

under Chapter 131E of the General Statutes, or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings.

(c) Information that is confidential and is not subject to discovery or use in civil actions under this section may be released to a professional standards review organization that performs any accreditation or certification including the Joint Commission on Accreditation of Healthcare Organizations. Information released under this subsection shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released under this subsection retains its confidentiality and is not subject to discovery or use in any civil actions as provided under this section, and the standards review organization shall keep the information confidential subject to this section. (1973, c. 1111; 1981, c. 725; 1983, c. 775, s. 1; 1999-222, s. 2; 2002-179, s. 19; 2004-149, s. 2.5.)

Effect of Amendments. —

Session Laws 2004-149, s. 2.5, effective August 2, 2004, in subsection (b), inserted the fourth sentence, and substituted "the person's" for "his" in the last sentence; in subsection (c), twice deleted "subsection (b) of" preceding "this section," substituted "including the Joint Commission on Accreditation of Healthcare Organizations" for "function" in the first sentence, substituted "subsection" for "subdivision" in the second and third sentences, and substituted "this section" for "that subsection" in the last sentence.

Article 6.

Health Care Facility Licensure Act.

Part 1. Nursing Home Licensure Act.

§ 131E-101. Definitions.

As used in this Part, unless otherwise specified:

(1) "Adult care home", as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the shelter or personal care their age or disability requires. Medical care in an adult care home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Adult care homes are to be distinguished from nursing homes subject to licensure under this Part.

(1a) "Combination home" means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and adult care home.

(2) "Commission" means the North Carolina Medical Care Commission.

(3) "Community advisory committee" means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E, Article 6, Part 2) in accordance with G.S. 143B-181.1.

(4) Repealed by Session Laws 1995, c. 535, s. 21.

(5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.

(6) "Nursing home" means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

(7) "Peer review committee" means any committee appointed in accordance with G.S. 131E-108, "Peer review."

(8) "Quality assurance committee" means a committee, agency, or department of a state or local professional organization, of a medical staff of a licensed hospital, nursing home, of nurses or aides on the staff of a nursing home, or adult care home, of physicians having privileges within the nursing home, or adult care home, or of a peer review corporation or organization that is formed for the purpose of evaluating the quality, cost of, or necessity for health care services under applicable federal and State statutes, regulations, and rules. (1961, c. 51, s. 3; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 21; 2004-149, s. 2.1.)

Effect of Amendments. — Session Laws 2004-149, s. 2.1, effective August 2, 2004, added subdivision (8).

§ 131E-107. Quality assurance, medical, or peer review committees.

(a) A member of a duly appointed quality assurance, medical or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131E-108.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S.

132-1, "'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings. (1983, c. 775, s. 1; 2004-149, s. 2.2.)

Effect of Amendments. — Session Laws 2004-149, s. 2.2, effective August 2, 2004, inserted "Quality assurance" in the section heading; inserted the subsection (a) designation; deleted "medical" preceding "quality assurance" in subsection (a); and added subsection (b).

Article 7.

Regulation of Emergency Medical Services.

§ 131E-158. Credentialed personnel required.

CASE NOTES

Applied in Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

Article 15.

Health Care Personnel Registry.

§ 131E-256. Health Care Personnel Registry.

(a) The Department shall establish and maintain a health care personnel registry containing the names of all health care personnel working in health care facilities in North Carolina who have:

(1) Been subject to findings by the Department of:

a. Neglect or abuse of a resident in a health care facility or a person to whom home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

b. Misappropriation of the property of a resident in a health care facility, as defined in subsection (b) of this section including places where home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

c. Misappropriation of the property of a health care facility.

d. Diversion of drugs belonging to a health care facility or to a patient or client.

e. Fraud against a health care facility or against a patient or client for whom the employee is providing services.

(2) Been accused of any of the acts listed in subdivision (1) of this subsection, but only after the Department has screened the allegation and determined that an investigation is required.

The Health Care Personnel Registry shall also contain all findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

(a1) The Department shall include in the registry a brief statement of any individual disputing the finding entered against the individual in the health care personnel registry pursuant to subdivision (1) of subsection (a) of this section.

(b) For the purpose of this section, the following are considered to be "health care facilities":

(1) Adult Care Homes as defined in G.S. 131D-2.
(2) Hospitals as defined in G.S. 131E-76.
(3) Home Care Agencies as defined in G.S. 131E-136.
(4) Nursing Pools as defined by G.S. 131E-154.2.
(5) Hospices as defined by G.S. 131E-201.
(6) Nursing Facilities as defined by G.S. 131E-255.
(7) State-Operated Facilities as defined in G.S. 122C-3(14)f.
(8) Residential Facilities as defined in G.S. 122C-3(14)e.
(9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.

(c) For the purpose of this section, the following are considered to be "health care personnel":

(1) In an adult care home, an adult care personal aide who is any person who either performs or directly supervises others who perform task functions in activities of daily living which are personal functions essential for the health and well-being of residents such as bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
(2) A nurse aide.
(3) An in-home aide or an in-home personal care aide who provides hands-on paraprofessional services.
(4) Unlicensed assistant personnel who provide hands-on care, including, but not limited to, habilitative aides and health care technicians.

(d) Health care personnel who wish to contest findings under subdivision (a)(1) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Health Care Personnel Registry.

(d1) Health care personnel who wish to contest the placement of information under subdivision (a)(2) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case hearing shall be filed within 30 days of the mailing of the written notice of the Department's intent to place information about the person in the Health Care Personnel Registry under subdivision (a)(2) of this section. Health care personnel who have filed a petition contesting the placement of information in the health care personnel registry under subdivision (a)(2) of this section are deemed to have challenged any findings made by the Department at the conclusion of its investigation.

(d2) Before hiring health care personnel into a health care facility or service, every employer at a health care facility shall access the Health Care Personnel Registry and shall note each incident of access in the appropriate business files.

(e) The Department shall provide an employer or potential employer of any person listed on the Health Care Personnel Registry information concerning the nature of the finding or allegation and the status of the investigation.

(f) No person shall be liable for providing any information for the health care personnel registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the health care personnel registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

(g) Health care facilities shall ensure that the Department is notified of all allegations against health care personnel, including injuries of unknown source, which appear to be related to any act listed in subdivision (a)(1) of this section. Facilities must have evidence that all alleged acts are investigated and must make every effort to protect residents from harm while the investigation is in progress. The results of all investigations must be reported to the Department within five working days of the initial notification to the Department.

(h) The North Carolina Medical Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

(i) In the case of a finding of neglect under subdivision (1) of subsection (a) of this section, the Department shall establish a procedure to permit health care personnel to petition the Department to have his or her name removed from the registry upon a determination that:

(1) The employment and personal history of the nurse aid does not reflect a pattern of abusive behavior or neglect;

(2) The neglect involved in the original finding was a singular occurrence; and

(3) The petition for removal is submitted after the expiration of the one-year period which began on the date the petitioner's name was added to the registry under subdivision (1) of subsection (a) of this section. (1995 (Reg. Sess., 1996), c. 713, s. 3(b); 1998-212, s. 12.16E; 1999-159, s. 1; 2000-55, s. 1; 2004-203, ss. 52(a), (b), (c).)

Effect of Amendments. — Session Laws 2004-203, ss. 52(a), 52(b), and 52(c), effective August 17, 2004, inserted subsection (a1); substituted "information concerning" for "of" in subsection (e); and added subsection (i).

Article 16.

Miscellaneous Provisions.

§ 131E-265. Criminal history record checks required for certain applicants for employment.

(a) Requirement; Nursing Home or Home Care Agency. — An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's

home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Division of Facility Services. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Division of Facility Services, shall provide to the nursing home or home care agency the results of the national criminal history check. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. — An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Depart-

ment of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Division of Facility Services. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Division of Facility Services, shall provide to the contract agency of the nursing home or home care agency the results of the national criminal history check. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. — If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the nursing home or home care agency, or the contract agency of a nursing home or home care agency, shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the nursing home or home care agency, or the contract agency of the nursing home or home care agency. If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. — An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. — As used in this section, the term "relevant offense" has the same meaning as in G.S. 131D-40.

(e) Penalty for Furnishing False Information. — Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. — A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.
(2) The nursing home or home care agency shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. — An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's

history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section. (1995 (Reg. Sess., 1996), c. 606, s. 3; 1997-125, s. 2; 1997-140, s. 4; 2000-154, ss. 3(a),(b); 2004-124, s. 10.19D(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 10.19D(a), effective January 1, 2005, inserted the three sentences preceding the last sentence in subsections (a) and (a1).

Chapter 132.

Public Records.

Sec.
132-1.2. Confidential information.
132-6.2. Provisions for copies of public records; fees.

§ 132-1. "Public records" defined.

Local Modification. — By virtue of Session Laws 2004-106, s. 1, Alleghany: 1991, c. 162, s. 1(c) should be stricken from the main volume.

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:
   a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
   b. Is the property of a private "person" as defined in G.S. 66-152(2).
   c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
   d. Is designated or indicated as "confidential or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) **(Effective until June 1, 2005)** Reveals the electronically captured image of an individual's signature, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

(4) **(Effective June 1, 2005)** Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document. (1989, c. 269; 1991, c. 745, s. 3; 1999-434, s. 7; 2001-455, s. 2; 2001-513, s. 30(b); 2003-226, s. 5; 2004-127, s. 17(b).)

Subsection (4) Set Out Twice. — The first version of subdivision (4) set out above is effective until June 1, 2005. The second version of subdivision (4) set out above is effective June 1, 2005.

Effect of Amendments. —

Session Laws 2004-127, s. 17.(b), effective June 1, 2005, inserted "date of birth" in subdivision (4).

§ 132-1.4. Criminal investigations; intelligence information records.

CASE NOTES

Cited in Jane Doe 1 v. Swannanoa Valley Youth Dev. Ctr., — N.C. App. —, 592 S.E.2d 715, 2004 N.C. App. LEXIS 299 (2004).

§ 132-6.2. Provisions for copies of public records; fees.

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium. (1995, c. 388, s. 3; 2004-129, s. 38.)

Effect of Amendments. — Session Laws 2004-129, s. 38, effective July 1, 2004, substituted "State Chief Information Officer or his designee" for "Information Resource Management Commission" in subsection (b).

Chapter 135.

Retirement System for Teachers and State Employees; Social Security; Health Insurance Program for Children.

Article 1.

Retirement System for Teachers and State Employees.

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Article 1.

Retirement System for Teachers and State Employees.

§ 135-1. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in G.S. 135-8.

(2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(5) "Average final compensation" shall mean the average annual compensation of a member during the four consecutive calendar years of membership service producing the highest such average; but shall not include any compensation, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. In the event a member is or has been in receipt of a benefit under the provisions of G.S. 135-105 or G.S. 135-106, the compensation used in the calcula-

tion of "average final compensation" shall be the higher of compensation of the member under the provisions of this Article or compensation used in calculating the payment of benefits under Article 6 of this Chapter as adjusted for percentage increases in the post disability benefit.

(6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this Chapter.

(7) "Board of Trustees" shall mean the Board provided for in G.S. 135-6 to administer the Retirement System.

(7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:

1. Performance-based compensation (regardless of whether paid in a lump sum, in periodic installments, or on a monthly basis);
2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
3. Payment of tax consequences for benefits provided by the employer, so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation; and
5. Employee contributions to eligible deferred compensation plans.

b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee. Notwithstanding any other provision of this Chapter, "compensation" shall not include:

1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
2. Travel supplement/allowance (nonaccountable allowance plans);
3. Employer contributions to eligible deferred compensation plans;
4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
5. Reimbursement of uninsured medical expenses;
6. Reimbursement of business expenses;
7. Reimbursement of moving expenses;
8. Reimbursement/payment of personal expenses;
9. Incentive payments for early retirement;
10. Bonuses paid incident to retirement;
11. Contract buyout/severance payments; and
12. Payouts for unused sick leave.

c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such pay-

ments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments.

(8) "Creditable service" shall mean the total of "prior service" plus "membership service" plus service, both noncontributory and purchased, for which credit is allowable as provided in G.S. 135-4. In no event, however, shall "creditable service" be deemed "membership service" for the purpose of determining eligibility for benefits accruing under this Chapter.

(9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.

(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above- described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. Employees of

State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa.

(11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.

(11a) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.

(11b) "Law-Enforcement Officer" means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(12) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.

(13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4.

(14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System.

(15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.

(16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.

(17) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System for which credit is allowable under G.S. 135-4; provided, persons now employed by the Board of Transportation shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to 1931.

(18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.

(19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7, subsection (b).

(20) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.

(23) "Service" shall mean service as a teacher or State employee as described in subdivision (10) or (25) of this section.

(24) "Social security breakpoint" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.

(25) "Teacher" shall mean any teacher, helping teacher, teacher in a job-sharing position under G.S. 115C-326.5 except for a beneficiary in that position, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee except for a teacher in a job-sharing position, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1 or G.S. 135-5.4. In all cases of doubt, the Board of Trustees, hereinbefore defined, shall determine whether any person is a teacher as defined in this Chapter. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "teacher" solely because the person holds a temporary or time-limited visa. Notwithstanding the foregoing, the term "teacher" shall not include any nonimmigrant alien employed in elementary or secondary public schools (whether employed in a full-time, part-time, temporary, permanent, or substitute teacher position) and participating in an exchange visitor program designated by the United States Department of State pursuant to 22 C.F.R. Part 62 or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q).

(26) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the Board of Trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 81/2; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1; 1965, c. 750; c. 780, s. 1; 1969, c. 44, s. 74; c. 1223, s. 16; c. 1227; 1971, c. 117, ss. 1-5; c. 338, s. 1; 1973, c. 507, s. 5; c. 640, s. 2; c. 1233; 1975, c. 475, s. 1; 1977, c. 574, s. 1; 1979, c. 972, s. 1; 1981, c. 557, ss. 1, 2; 1983, c. 412, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 227; 1985, c. 649, s. 3; 1987, c. 738, ss. 29(a), 36(a); 1991, c. 51, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 7.31(c); 1998-1, s. 4(g); 2001-424, s. 32.24(b); 2001-426, ss. 2, 3; 2001-513, s. 24; 2002-110, s. 1; 2002-126, ss. 28.6(b), 28.12(a); 2002-174, s. 2; 2003-359, ss. 1, 2; 2004-81, s. 1; 2004-199, s. 34(a).)

Effect of Amendments. —

Session Laws 2004-81, s. 1, effective July 1, 2004, added "or by the United States Department of Homeland Security pursuant to 8 C.F.R. Part 214.2(q)" at the end of subdivision (25).

Session Laws 2004-199, s. 34(a), effective August 17, 2004, substituted "teacher in a job-sharing position under G.S. 115C-326.5" for "classroom teacher in a job-sharing position as defined in G.S. 115C-302(b)" in subdivision 25.

CASE NOTES

The purpose of this and the following sections, etc.

Under G.S. 135-2, the Retirement System for Teachers and State Employees was established for the purpose of providing retirement allowances and other benefits under the provisions of G.S. 135-1 et seq., for teachers and State employees of the State of North Carolina. State Employees Ass'n of N.C., Inc. v. State, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

§ 135-3. Membership.

The membership of this Retirement System shall be composed as follows:

(1) All persons who shall become teachers or State employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin 90 days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this Chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this Chapter. Under such rules and regulations as the Board of Trustees may establish and promulgate, Cooperative Agricultural Extension Service employees excluded from coverage under Title II of the Social Security Act may in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal civil service appointment may elect in writing, on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the Local Retirement System; provided further, that effective July 1, 1985, an extension service employee excluded from coverage under Title II of the Social Security Act who is employed in part by a county and who is compensated in whole by the Cooperative Agricultural Extension Service pursuant to a contract where the Cooperative Agricultural Extension Service is reimbursed by the county for the county's share of the compensation shall participate exclusively in the Teachers' and State Employees' Retirement System to the extent of their full compensation. On or after July 1, 1979, upon election, appointment or employment, a legislative employee shall automatically become a member of the Teachers' and State Employees' Retirement System. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.

(2) All persons who are teachers or State employees on February 17, 1941,

or who may become teachers or State employees on or before July 1, 1941, except those who shall notify the Board of Trustees, in writing, on or before January 1, 1942, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired.

(4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January 1, 1942, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of 12 months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this Chapter, or within said period of 12 months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this Chapter. If such member so elects, he or she may pay to the Board of Trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this Chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable compensation received by such member on the effective date of such executive order.

(5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946. Any such member on or after June 30, 1965, anything in this Chapter to the contrary, may deposit in the annuity savings fund by a single payment the contributions plus interest which would have been credited to his account had he not signed a nonelection blank on or before January 1, 1942, and be entitled to such membership service credits and any prior service credits which became void upon execution of such nonelection blank; provided that the employer will pay the appropriate matching contributions.

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1396, s. 1.

(7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963, and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 135-5(b) as in effect at the date of such retirement.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 135-5(b), subdivisions (1), (2) and (3).

b. In lieu of the benefits provided in paragraph a of this subdivision (7) any member who separates from service on or after July 1, 1951, and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951, and prior to the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such

member may so retire only upon written application to the Board of Trustees setting forth at what time, subsequent to July 1, 1951, and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

d. Should a teacher or employee who retired on an early or service retirement allowance be restored to service prior to the attainment of the age of 62 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to the allowance described in 1 below reduced by the amount in 2 below.

1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
2. The actuarial equivalent of the retirement benefits he previously received.

e. Should a teacher or employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of his retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1, and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 135-1(3).

(8) The provisions of this subsection (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforestated requirement of 15 or more years of creditable service

shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	*Percentage Reduction*
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the

time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

b3. Vested deferred retirement allowance of members retiring on or after July 1, 1994. — In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.

c. **(Effective until June 30, 2005)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of

G.S. 135-3(8)c is set out twice. See note.

retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity, except as a substitute teacher or a part-time tutor, with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a substitute, interim, or permanent basis in a public school or a charter school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit or a charter school under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment.

c. **(Effective June 30, 2005)** Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any capacity,

G.S. 135-3(8)c is set out twice. See note.

except as a substitute teacher or a part-time tutor, with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a substitute, interim, or permanent basis in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment.

d. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989.

(8a) Notwithstanding the provisions of paragraphs c and d of subdivision (8) to the contrary, a beneficiary who was a beneficiary retired on an early or service retirement with the Law Enforcement Officers' Retirement System at the time of the transfer of law enforcement officers employed by the State and beneficiaries last employed by the State to this Retirement System on January 1, 1985, and who also was a contributing member of this Retirement System on January 1, 1985, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership.

(9) Members who are participating in an intergovernmental exchange of personnel under the provisions of Article 10 of Chapter 126 may retain their membership status and receive all benefits provided by this Chapter during the period of the exchange provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall, notwithstanding whether he and his employer are making contributions to the member's account during the exchange period, be entitled to the death benefit if he otherwise qualifies under the provisions of this Article and provided further that no duplicate benefits shall be paid. (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 91/2; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2; 1965, c. 780, s. 1; c. 1187; 1967, c. 720, ss. 1, 2, 15; c. 1234; 1969, c. 1223, ss. 1, 2, 14; 1971, c. 117, ss. 6-8; c. 118, ss. 1, 2; 1973, c. 241, s. 1; c. 994, s. 5; c. 1363; 1977, c. 783, s. 3; 1979, c. 396; c. 972, s. 2; 1981, c. 979, s. 1; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 228, 229, 236; c. 1106, ss. 1, 2, 4; 1985, c. 520, s. 1; c. 649, ss. 2, 11; 1987, c. 513, s. 1; c. 738, s. 38(b); 1989, c. 791; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(e), (f), 7.31(d), (e); 1995, c. 509, s. 73.1; 1998-212, s. 28.24(a); 1998-217, s. 67; 2000-67, s. 8.24(a); 2001-424, s. 32.25(a); 2002-126, ss. 28.10(a), (b), (d), 28.13(a); 2004-124, s. 31.18A(a), (b); 2004-199, s. 57(a).)

Subdivision (8)c Set Out Twice. — The first version of subdivision (8)c set out above is effective until June 30, 2005. The second version of subdivision (8)c set out above is effective June 30, 2005.

Editor's Note. —

Session Laws 2002-126, s. 28.10(a), as amended by Session Laws 2004-124, s. 31.18A(a), amended Session Laws 1998-212, s. 28.24(d) to change the expiration date affecting subdivision (8)c, as amended by the 1998 act, from June 30, 2003, to June 30, 2005.

Session Laws 2004-124, ss. 31.18A(e)-(g), as amended by Session Laws 2004-161, s. 53.2, provides: "(e) The Retirement Systems Division shall conduct an analysis of the postretirement reemployment issue, including a survey of peer State systems, cost analyses, review of relevant impacting federal regulations, and the administrative impact of various postretirement reemployment policies. The Retirement Systems Division shall develop findings and recommendations for the adoption of an efficient and fiscally sound policy on postretirement reemployment and shall report those findings and recommendations, as well as the analysis that produced them, to the General Assembly by February 1, 2005.

"(f) In order to facilitate the success of its request for a private letter ruling from the Internal Revenue Service, as mandated by Section 28.13(d) of S.L. 2002-126, the Retirement Systems Division may modify the scope of its inquiry to the extent that a substantive ruling may be obtained and used by the General Assembly to adopt an efficient and fiscally sound policy on postretirement reemployment.

"(g) Notwithstanding any other provision of law, effective July 1, 2004, each local school administrative unit or charter school participating in the Teachers' and State Employees' Retirement System shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit or charter school shall report monthly to the Retirement Sys-

tems Division on payments made pursuant to this subsection.

"Notwithstanding any other provision of law, effective July 1, 2004, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution rate, that exceeds the State-supported salary level for that position shall be paid from local funds."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 1998-212, s. 28.24(a), as amended by Session Laws 2002-126, s. 28.10(a), and as amended by Session Laws 2004-124, s. 31.18A(a), effective January 1, 1999, and expiring on June 30, 2005, added the second and third paragraphs in subdivision (8)c.

Session Laws 1998-217, s. 67, as amended by Session Laws 2002-126, s. 28.10(b), and as amended by Session Laws 2004-124, s. 31.18A(b), effective January 1, 1999, and expiring June 30, 2005, substituted "retired" for "probationary," and "G.S. 115C-325(a)(5a)" for "G.S. 115C-325-(a)(5)" in the present second paragraph of subdivision (8)c.

Session Laws 2004-199, s. 57(a), effective August 17, 2004, and expiring June 30, 2005, in the second paragraph of subdivision (8)c., added "or a charter school" to the end of the first sentence and inserted "or a charter school" following "administrative unit" in the second sentence; and made a minor punctuation change.

§ 135-5. Benefits.

(a) Service Retirement Benefits. —

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of

notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later.

(a1) Early Service Retirement Benefits. — Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement from service on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of 65 years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

b. The pension which would have been provided on account of such contributions at age 65, or at his retirement age, whichever is the earlier age.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided that the computation shall be made prior to any reduction resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963, but prior to July 1, 1967. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, but prior to July 1, 1967, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to the sum of (i) one percent (1%) of the portion of his average final compensation not in excess of forty-eight hundred dollars ($4,800) plus one and one-half percent (1½%) of the portion of such compensation in excess of forty-eight hundred dollars ($4,800), multiplied by the number of years of his creditable service rendered prior to January 1, 1966, and (ii) one percent (1%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service rendered after January 1, 1966.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five twelfths of one percent (5/12 of 1%)

thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b2) Service Retirement Allowance of Members Retiring on or after July 1, 1967, but prior to July 1, 1969. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1967, but prior to July 1, 1969, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b3) Service Retirement Allowances of Members Retiring on or after July 1, 1969, but prior to July 1, 1973. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1969, but prior to July 1, 1973, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or on or after his sixty-second birthday and the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of fifty-six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of fifty-six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixty-second birthday but on or after his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-second birthday.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b4) Service Retirement Allowances of Members Retiring on or after July 1, 1973, but prior to July 1, 1975. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1973, but prior to July 1, 1975, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-quarter percent (1¼%) of the portion of his average final compensation not in excess of five thousand six hundred dollars ($5,600) plus one and one-half percent (1½%) of the portion of such compensation in excess of five thousand six hundred dollars ($5,600), multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b5) Service Retirement Allowance of Members Retiring on or after July 1, 1975, but prior to July 1, 1977. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1975, but prior to July 1, 1977, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and one-half percent (1½%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b6) Service Retirement Allowance of Members Retiring on or after July 1, 1977, but prior to July 1, 1980. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1977, but prior to July 1, 1980, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday, regardless of his years of creditable service, or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-five one hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service.

(2a) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(2b) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2a) above.

(3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b7) Service Retirement Allowance of Members Retiring on or after July 1, 1980, but prior to July 1, 1985. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1980, but prior to July 1, 1985, a member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after the completion of 30 years of creditable service, such allowance shall be equal to one and fifty-seven hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his sixtieth and before his sixty-fifth birthday and prior to his completion of 30 or more years of creditable service, his retirement allowance shall be computed as in (1) above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) If the member's service retirement date occurs before his sixtieth birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in (2) above.

(4) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b8) Service Retirement Allowance of Law-Enforcement Officers Retiring on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985]. — Upon retirement from service, in accordance with subsection (a) of this section, on or after January 1, 1985 [on or after January 1, 1985, but prior to July 1, 1985], a member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-seven one hundredths percent (1.57%) of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in (1) above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(b9) Service Retirement Allowance of Members Retiring on or after July 1, 1985, but before July 1, 1988. — Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1985, but before July 1, 1988, a member shall receive the following service retirement allowance:

(1) A member who is a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law-enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and fifty-eight one hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable service as a law-enforcement officer and prior to his completion of 30 years of creditable service, his retirement allowance shall be computed as in a. above, but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law-enforcement officer or an eligible former law-enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and fifty-eight hundredths percent (1.58%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 or more years of creditable service, his retirement allowance shall be computed as in a. above but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to his completion of 30 or more years of creditable service, his service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in b. above.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988, but before July 1, 1989. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989, but before July 1, 1990. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990, but before July 1, 1992. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, but before July 1, 1992, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b, c and d.

(b13) Service Retirement Allowance of Members Retiring on or after July 1, 1992, but before July 1, 1993. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1992, but before July 1, 1993, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy hundredths percent (1.70%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c., and d.

(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1993, but before July 1, 1994. — Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1993, but before July 1, 1994, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs after his 50th and before his 55th birthday with 15 or more years of creditable

service as a law enforcement officer and prior to the completion of 30 years of creditable service, the allowance shall be computed as in G.S. 135-5(b14)(1)a., but shall be reduced by one-third of one percent (⅓ of 1%) thereof for each month by which the retirement date precedes the first day of the month coincident with or next following his 55th birthday.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to the completion of 25 years or more of creditable service, the retirement allowance shall be computed as in G.S. 135-5(b14)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b14)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(b).

(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, but before July 1, 1995. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995, but Before July 1, 1997. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, but before July 1, 1997, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and

seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b17) Service Retirement Allowance of Members Retiring on or After July 1, 1997, but Before July 1, 2000. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 2000, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b17)(1)a, reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty hundredths percent (1.80%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b17)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his

retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b17)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b18) Service Retirement Allowance of Members Retiring on or After July 1, 2000, but Before July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2000, but before July 1, 2002, a member shall receive the following service retirement allowance.

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b18)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b18)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-one hundredths percent (1.81%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b18)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b18)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b18)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(b19) Service Retirement Allowance of Members Retiring on or After July 1, 2002. — Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 2002, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of his creditable service.

b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:

1. The service retirement allowance payable under G.S. 135-5(b19)(1)a. reduced by one-third of one percent (⅓ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b19)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of membership service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and eighty-two hundredths percent (1.82%) of his average final compensation, multiplied by the number of years of creditable service.

b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b19)(2)a. but shall be reduced by one-quarter of one percent (¼ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (¼ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or

2. The service retirement allowance as computed under G.S. 135-5(b19)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b19)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b).

(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. — The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically

incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959, but prior to July 1, 1963. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1959, but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;

(2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of 65 years had the member continued in service to the age of 65 years without further change in compensation.

If the member has not less than 20 years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars ($70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963, but prior to July 1, 1969. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, but prior to July 1, 1969, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of 60 years, minus the actuarial equivalent to the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d2) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1969, but prior to July 1, 1971. — Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1969, but prior to July 1, 1971, a member shall receive a service retirement allowance if he has attained the age of 60 years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation to the age of 65 years, minus the actuarial equivalent of the contributions he would have made during such continued service.

(2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall receive not less than the benefit provided by G.S. 135-5(d).

(d3) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1971, but prior to July 1, 1982. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1971, but prior to July 1, 1982, a member shall receive a service retirement allowance if he has attained the age of 65 years; otherwise he shall receive a disability retirement allowance which shall be computed as follows:

(1) Such allowance shall be equal to a service retirement allowance calculated on the basis of the member's average final compensation prior to his disability retirement and the creditable service he would have had at the age of 65 years if he had continued in service.

(2) Notwithstanding the foregoing provisions,

a. Any member whose creditable service commenced prior to July 1, 1971, shall receive not less than the benefit provided by G.S. 135-5(d2);

b. The amount of disability allowance payable from the reserve funds of the Retirement System to any member retiring on or after July 1, 1974, who is eligible for and in receipt of a disability benefit under the Social Security Act shall be seventy percent (70%) of the amount calculated under a above, and the balance shall be

provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements; and

c. The amount of disability allowance payable to any member retiring on or after July 1, 1974, who is not eligible for and in receipt of a disability benefit under the Social Security Act shall not be payable from the reserve funds of the Retirement System but shall be provided by the employer from time to time during each year in such amounts as may be required to cover such payments as current disbursements.

(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, Who Left Service prior to January 1, 1988. — Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

(e) Reexamination of Beneficiaries Retired for Disability. — The provisions of this subsection shall be applicable to members retired on a disability retirement allowance and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect

to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability; provided that, on and after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a. below reduced by the amount in b. below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, should a beneficiary who retired on a disability retirement allowance be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members. Upon the subsequent retirement of the beneficiary, he shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1),(d2) and (d3) each member retired

on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 60 days after such request shall not be paid a benefit until the information so requested is provided, and should such refusal or failure to provide such information continue for 240 days after such request, the right of a beneficiary to a benefit under the Article may be terminated.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this subsection. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be determined in accordance with subdivision (3a) of this subsection.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.

(f) Return of Accumulated Contributions. — Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection.

(f1) Expired.

(g) Election of Optional Allowance. — With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within

90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963. — If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. — If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. — Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. — The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947. — Prior to July 1, 1947, all benefits payable as of February 22, 1945, shall be computed on the basis of the provisions of Chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the Board of Trustees may adopt, the provisions of this Article as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The Board of Trustees may authorize such transfers of reserve between the funds of the Retirement System as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members. — If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this Chapter to the

contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with G.S. 135-5(g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen percent (15%) thereof, or by fifteen dollars ($15.00), whichever is the lesser; provided that, if such member had rendered not less than 20 years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars ($70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) Increase in Benefits to Those Persons Who Were in Receipt of Benefits prior to July 1, 1967. — From and after July 1, 1967, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to July 1, 1967, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Period in Which Benefits Commenced	Percentage
January 1, 1966, to June 30, 1967	5%
Year 1965	6%
Year 1964	7%
Year 1963	8%
and so on concluding with	
Year 1942	29%

The minimum increase pursuant to this subsection (k) shall be ten dollars ($10.00) per month; provided that, if an optional benefit has been elected, said minimum shall be reduced actuarially as determined by the Board and shall be applicable to the retired member, if surviving, otherwise to his designated beneficiary under the option elected.

(*l*) Death Benefit Plan. — There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation

duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (*l*) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all

other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

a. When employment has been terminated, the last day the member actually worked.

b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(*l*1) Reciprocity of Death Benefit Plan. — Only for the purpose of determining eligibility for the death benefit provided for in subsection (*l*) of this section, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. In no event shall a death benefit provided for in G.S. 135-5(*l*) be paid if a death benefit is paid under G.S. 135-63.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

(1)a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance,

b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c., notwithstanding the requirement of obtaining age 50, or

c. The member had not commenced to receive a retirement allowance as provided under this Chapter.

(2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.

(3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (*l*) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

(n) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

(o) Post-Retirement Increases in Allowances. — As of December 31, 1969, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase that equals or exceeds three per centum (3%), each beneficiary receiving a retirement allowance as of December 31, 1968, shall be entitled to have his allowance increased three per centum (3%) effective July 1, 1970.

As of December 31, 1970, the ratio of the Consumer Price Index to such index one year earlier shall be determined. If such ratio indicates an increase of at least one per centum (1%), each beneficiary on the retirement rolls as of July 1, 1970, shall be entitled to have his allowance increased effective July 1, 1971 as follows:

Increase In Index	*Increase In Allowance*
1.00 to 1.49%	1%
1.50 to 2.49%	2%
2.50 to 3.49%	3%
3.50% or more	4%

As of December 31, 1971, an increase in retirement allowances shall be calculated and made effective July 1, 1972, in the manner described in the preceding paragraph. As of December 31 of each year after 1971, the ratio (R) of the Consumer Price Index to such index one year earlier shall be determined, and each beneficiary on the retirement rolls as of July 1 of the year of determination shall be entitled to have his allowance increased effective on July 1 of the year following the year of determination by the same percentage

of increase indicated by the ratio (R) calculated to the nearest tenth of one per centum, but not more than four per centum (4%); provided that any such increase in allowances shall become effective only if the additional liabilities on account of such increase do not require an increase in the total employer rate of contributions.

The allowance of a surviving annuitant of a beneficiary whose allowance is increased under this subsection shall, when and if payable, be increased by the same per centum.

Any increase in allowance granted hereunder shall be permanent, irrespective of any subsequent decrease in the Consumer Price Index, and shall be included in determining any subsequent increase.

For purposes of this subsection, Consumer Price Index shall mean the Consumer Price Index (all items — United States city average), as published by the United States Department of Labor, Bureau of Labor Statistics.

Notwithstanding the above paragraphs, retired members and beneficiaries may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases. Such increases in post-retirement allowances shall be comparable to cost-of-living salary increases for active members in light of the differences between the statutory payroll deductions for State retirement contributions, Social Security taxes, State income withholding taxes, and federal income withholding taxes required of each group. The increases for retired members shall include the cost-of-living increases provided in this section. The cost-of-living increases allowed retired and active members of the system shall be comparable when each group receives an increase that has the same relative impact upon the net disposable income of each group.

(p) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1967. — From and after July 1, 1971, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1963, shall be increased by twenty percent (20%) thereof; the monthly benefits to or on account of persons who commenced receiving benefits after June 30, 1963 and before July 1, 1967, shall be increased by five percent (5%) thereof. These increases shall be calculated after monthly retirement allowances as of July 1, 1971, have been increased to the extent provided for in the preceding subsection (o).

(q) Increases in Benefits to Those Persons Who Were Retired prior to January 1, 1970. — From and after July 1, 1973, the monthly benefits to or on account of persons who commenced receiving benefits from the System prior to January 1, 1970, shall be increased by a percentage thereof. Such percentage shall be determined in accordance with the following schedule:

Year(s) in Which Benefits Commenced	*Percentage*
1969	1
1968	4
1967	6
1965 through 1966	9
1964	12
1963	14
1959 through 1962	17
1942 through 1958	22

These increases shall be calculated after monthly retirement allowances as of July 1, 1973, have been increased to the extent provided for in the preceding subsection (o).

(r) Notwithstanding anything herein to the contrary, effective July 1, 1973, any member who retired after attaining the age of 60 with 15 or more years of

creditable service shall receive a monthly benefit of no less than seventy-five dollars ($75.00) prior to the application of any optional benefit.

(s) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1974, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased by one percent (1%) thereof for each year by which the member retired prior to the age of 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1974, have been increased to the extent provided for in the preceding subsection (o).

(t) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1973, which shall become effective on July 1, 1974, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two percent (2%) to a total of six percent (6%) for the year 1974 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(u) Repealed by Session Laws 1975, c. 875, s. 47.

(v) Notwithstanding any of the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1974, which shall become payable on July 1, 1975, and to each beneficiary on the retirement rolls as of July 1, 1975, which shall become payable on July 1, 1976, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional four percent (4%) to a total of eight percent (8%) for the years 1975 and 1976 only, provided that the increases do not exceed the actual percentage increase in the Consumer Price Index as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(w) Notwithstanding any other provision of this section, the increase in the allowance to each beneficiary on the retirement rolls as otherwise provided in G.S. 135-5(o) shall be the current maximum of four per centum (4%) plus an additional four per centum (4%) to a total of eight per centum (8%) on July 1, 1975, and July 1, 1976, provided the increases do not exceed the actual percentage increase in the cost of living as determined in G.S. 135-5(o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary. The cost of these increases shall be borne from the funds of the Retirement System unless the 1975 Session of the General Assembly provides an appropriation to fund this provision.

(x) Increases in Benefits to Those Persons on Disability Retirement Who Were Retired prior to July 1, 1971. — From and after July 1, 1975, the monthly benefits to members who commenced receiving disability benefits prior to July 1, 1963, shall be increased one percent (1%) thereof for each year by which the member retired prior to age 65 years; the monthly benefits to members who commenced receiving disability benefits after June 30, 1963, and before July 1, 1971, shall be increased by five percent (5%) thereof. These increases shall be calculated before monthly retirement allowances as of June 30, 1975, have been increased to the extent provided in the preceding provisions of this Chapter.

(y) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1976, which shall become payable on July 1, 1977, and to each beneficiary on the retirement rolls as of July 1, 1977, which shall become payable on July 1, 1978, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional two and one-half percent (2½%) for the years beginning July 1,

1977, and July 1, 1978. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(z) Increases in Benefits Paid in Respect to Members Retired prior to July 1, 1975. — From and after July 1, 1977, the monthly benefits to or on account of persons who commenced receiving benefits prior to July 1, 1975, shall be increased by seven percent (7%) thereof. This increase shall be calculated before monthly retirement allowances as of July 1, 1977, have been increased to the extent provided for in the preceding subsection (o). The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(aa) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional one percent (1%) for the year beginning July 1, 1979. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(bb) Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, as otherwise provided in G.S. 135-5(o), shall be the current maximum four percent (4%) plus an additional three percent (3%) computed on the retirement allowance prior to any increase authorized by paragraph (cc) of this section. Provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(cc) Increases in Benefits to Those Persons Who Were Retired Prior to July 1, 1977. — From and after July 1, 1980, the monthly benefits to or on account of persons who commenced receiving benefits from the system prior to July 1, 1977, shall be increased by a percentage in accordance with the following schedule:

Period in Which Benefits Commenced	*Percentage*
On or before June 30, 1963	10%
July 1, 1963, to June 30, 1968	7%
July 1, 1968, to June 30, 1977	2%

This increase shall be calculated before monthly retirement allowances, as of July 1, 1980, have been increased for all cost-of-living increases allowed for the same period.

(dd) From and after July 1, 1981, the retirement allowance to or on account of the beneficiaries whose retirement commenced prior to July 1, 1980, shall be increased by three percent (3%). These increases shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (ee) of this section.

(ee) Adjustment in Allowances Paid Beneficiaries Whose Retirement Commenced Prior to July 1, 1980. — From and after July 1, 1981, the retirement allowance to or on account of beneficiaries whose retirement commenced prior to July 1, 1980, shall be adjusted by an increase of one and three-tenths percent (1.3%). This adjustment shall be calculated on the basis of the allowance payable and in effect on June 30, 1980, so as not to compound on the increases otherwise payable under paragraphs (bb), (cc) and (dd) of this section.

(ff) From and after July 1, 1982, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1981, shall be increased by one-tenth of one percent (0.1%) of the allowance payable on July 1, 1981.

(gg) From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by two and one-half percent (2.5%) of the allowance payable on July 1, 1982,

provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (o) of this section, plus an additional one and one-half percent (1.5%) of the allowance payable on July 1, 1982, in order to supplement the increase payable in accordance with subsection (o) of this section.

(hh) Notwithstanding any other provision of this Chapter, from and after July 1, 1983, the retirement allowance payable to each teacher and State employee, who retired prior to July 1, 1973, and who is in receipt of a reduced retirement allowance based upon 30 or more years of contributing membership service, shall be increased by the elimination of the reduction factors applicable at the time of their retirement under G.S. 135-3(8) or G.S. 135-5(b3). The provisions of this subsection shall apply equally to the allowance of a surviving annuitant of a beneficiary.

(ii) From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1983, in accordance with G.S. 135-5(o), plus an additional four and two-tenths percent (4.2%) of the allowance payable on July 1, 1983.

(jj) Increase in Allowance Where Retirement Commenced on or before July 1, 1984, or after that Date, but before June 30, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(kk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1985. — From and after July 1, 1985, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1985, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1985. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1985, so as not to be compounded on any other increases payable under subsection (o) of this section or otherwise granted by act of the 1985 Session of the General Assembly.

(*ll*) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985, and June 30, 1986.

(mm) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(nn) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(oo) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1988. — From and after July 1, 1988, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1988, shall be increased by one and two-tenths percent (1.2%) of the allowance payable on June 1, 1988. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1988, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1987 Session of the General Assembly.

(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. — From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly.

(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(tt) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1992. — From and after July 1, 1992, the retirement allowance to or on account

of beneficiaries on the retirement rolls as of June 1, 1992, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 1992. This allowance shall be calculated on the allowance payable and in effect on June 30, 1992, so as not to be compounded on any other increase granted by act of the 1991 Session of the General Assembly, 1992 Regular Session.

(uu) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1993. — From and after July 1, 1993, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1993, shall be increased by six-tenths of one percent (.6%) of the allowance payable on June 1, 1993. This allowance shall be calculated on the allowance payable and in effect on June 30, 1993, so as not to be compounded on any other increase granted by act of the 1993 General Assembly.

(ww) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(xx) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1994. — From and after July 1, 1994, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1994, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1994. This allowance shall be calculated on the allowance payable and in effect on June 30, 1994, so as not to be compounded on any other increase granted by act of the 1993 General Assembly, 1994 Regular Session.

(yy) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined

by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. — From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly.

(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(ccc) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1977, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(ddd) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1997. — From and after July 1, 1997, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1997, shall be increased by two and two-tenths percent (2.2%) of the allowance payable on June 1, 1997. This allowance shall be calculated on the allowance payable and in effect on June 30, 1997, so as not to be compounded on any other increase granted by act of the 1997 General Assembly.

(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(fff) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(ggg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2000. — From and after July 1, 2000, the retirement allowance to or on account

of beneficiaries on the retirement rolls as of June 1, 2000, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 2000. This allowance shall be calculated on the allowance payable and in effect on June 30, 2000, so as not to be compounded on any other increase granted by act of the 1999 General Assembly, 2000 Regular Session.

(hhh) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on June 1, 2000, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(iii) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(jjj) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(kkk) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 2002. — From and after July 1, 2002, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 2002, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 2002. This allowance shall be calculated on the allowance payable and in effect on June 30, 2002, so as not to be compounded on any other increase granted by act of the 2002 Regular Session of the 2001 General Assembly.

(*lll*) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(mmm) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of

beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3; 1965, c. 780, s. 1; 1967, c. 720, ss. 4-10; c. 1223; 1969, c. 1223, ss. 2, 5-12; 1971, c. 117, ss. 11-15; c. 118, ss. 3-7; 1973, c. 241, ss. 3-7; c. 242, ss. 2-4; c. 737, s. 2; c. 816, s. 2; c. 994, ss. 1, 3; c. 1312, ss. 1-3; 1975, c. 457, ss. 2-4; c. 511, ss. 1, 2; c. 634, ss. 1, 2; c. 875, s. 47; 1977, c. 561; c. 802, ss. 50.65-50.70; 1979, c. 838, s. 99; c. 862, ss. 1, 4, 5; c. 972, s. 4; c. 975, s. 1; 1979, 2nd Sess., c. 1137, ss. 63, 64, 66; c. 1196, s. 1; c. 1216; 1981, c. 672, s. 1; c. 689, s. 2; c. 859, ss. 42, 42.1, 44; c. 940, s. 1; c. 975, s. 3; c. 978, ss. 1, 2; c. 980, ss. 3, 4; 1981 (Reg. Sess., 1982), c. 1282, s. 11; 1983, c. 467; c. 761, ss. 218, 219, 228, 229; c. 902, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1034, ss. 222, 232-235, 237; c. 1049, ss. 1-3; 1985, c. 348, s. 2; c. 479, ss. 189(a), 190, 191, 192(a), 194; c. 520, s. 2; c. 649, ss. 8, 10; 1985 (Reg. Sess., 1986), c. 1014, s. 49(a); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(a), 29(c)-(j), 37(a); c. 824, s. 3; 1987 (Reg. Sess., 1988), c. 1061, s. 1; c. 1086, s. 22(a); c. 1108, s. 1; c. 1110, ss. 1-3; 1989, c. 717, ss. 1-6; c. 731, s. 1; c. 752, s. 41(a); c. 770, s. 31; c. 792, ss. 3.1-3.3; 1989 (Reg. Sess., 1990), c. 1077, ss. 2-5; 1991 (Reg. Sess., 1992), c. 766, s. 2; c. 900, ss. 52(a)-(c), 53(b); 1993, c. 321, ss. 74(c)-(e), 74.1(e), (f), 74.2(a); c. 531, s. 5; 1993 (Reg. Sess., 1994), c. 769, ss. 7.30(g)-(j), (m), (r); 1995, c. 507, ss. 7.22(a), 7.23(a), (b), 7.23A(a), (b); c. 509, ss. 74, 75; 1996, 2nd Ex. Sess., c. 18, s. 28.21(a); 1997-443, s. 33.22(a)-(d); 1998-153, s. 21(a); 1998-212, ss. 28.26(c), 28.27(a); 1999-237, s. 28.23(a); 2000-67, ss. 26.20(a)-(d); 2001-424, s. 32.22(a); 2002-126, ss. 28.8(a), 28.9(a)-(d); 2003-284, s. 30.17(a); 2003-359, ss. 3-6, 11; 2004-124, s. 31.17(a); 2004-147, s. 1.)

Study Commission on State Disability Income Plan, Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers. — Session Laws 2003-284, ss. 30.20(a) to (i), as amended by Session Laws 2004-78, s. 5, provides: "(a) There is established a Study Commission on the State Disability Income Plan, the State Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers.

"(b) The Commission shall be comprised of 13 members as follows:

"(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.

"(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.

"(3) The State Treasurer, or the Treasurer's designee.

"(4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

"(5) The Chair of the North Carolina Industrial Commission, or the Chair's designee.

"(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

"(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

"Any vacancy shall be filled by the officer who made the original appointment.

"(c) The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(*l*), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

"(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission shall terminate the earlier of the delivery of its final report or December 31, 2004.

"(e) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

"(f) The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

"(g) The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

"(h) The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2005.

"(i) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of subsections (a) through (i) of this section."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.17.(a), effective July 1, 2004, added subsection (mmm).

Session Laws 2004-147, s. 1, effective July 1, 2004, and applicable to persons dying on or after that date, in subsection (*l*), inserted "but before July 1, 2004" in the ninth full paragraph and added the last paragraph.

§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.

Editor's Note. —

Session Laws 2004-164, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of (i) New Century High School in Saxapahaw; (ii) Lake Norman Charter School in Huntersville; (iii) Exploris Middle School in Raleigh, a charter school division of Exploris; (iv) Magellan Charter School in Raleigh; (v) American Renaissance Charter School in Statesville; and (vi) Healthy Start Academy in Durham may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

§ 135-7. Management of funds.

(a) Vested in Board of Trustees. — The Board of Trustees shall be the trustee of the several funds created by this Chapter as provided in this section and in G.S. 135-8.

(b) Regular Interest Allowance. — The Board of Trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the Board of Trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on

the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the Board of Trustees on the basis of the interest earnings of the System for the preceding year and of the probable earnings to be made, in the judgment of the Board, during the immediate future, such rate to be limited to a minimum of three per centum (3%) and a maximum of four per centum (4%), with the latter rate applicable during the first year of operation of the Retirement System.

(c) Custodian of Funds; Disbursements; Bond of Director. — The State Treasurer shall be the custodian of the several funds and shall invest their assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(d) Deposits to Meet Disbursements. — For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum (10%) of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer of North Carolina.

(e) Personal Profit or Acting as Surety Prohibited. — Except as otherwise herein provided, no trustee and no employee of the Board of Trustees shall have any direct interest in the gains or profits of any investment made by the Board of Trustees, nor as such receive any pay or emolument for his service. No trustee or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the Board of Trustees; nor shall any trustee or employee of the Board of Trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the Board of Trustees.

(f) Retiree Health Benefit Fund. — The Retiree Health Benefit Fund is established as a fund in which accumulated contributions from employers and any earnings on those contributions shall be used to provide health benefits to retired and disabled employees and their applicable beneficiaries as provided by this Chapter. The Retiree Health Benefit Fund shall be administered in accordance with the provisions of subsection (a) of this section. Employer contributions to the Fund are irrevocable. The assets of the Fund are dedicated to providing health benefits to retired and disabled employees and their applicable beneficiaries as provided by this Chapter and are not subject to the claims of creditors of the employers making contributions to the Fund. (1941, c. 25, s. 7; 1957, c. 846, s. 2; 1959, c. 1181, s. 2; 1961, c. 397; 1965, c. 780, s. 1; 1967, c. 720, s. 11; c. 1205; 1971, c. 386, s. 4; 1973, c. 241, s. 9; 1979, c. 467, ss. 14, 15; 2004-124, s. 31.20(a).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 31.20(a), effective July 1, 2004, inserted "this section and in" in subsection (a); and added subsection (f).

ARTICLE 3.

Other Teacher, Employee Benefits; Child Health Benefits.

Part 2. Administrative Structure.

§ 135-39.4A. Executive Administrator.

(a) The Plan shall have an Executive Administrator and a Deputy Executive Administrator. The Executive Administrator and the Deputy Executive Administrator positions are exempt from the provisions of Chapter 126 of the General Statutes as provided in G.S. 126-5(c1).

(b) The Executive Administrator shall be appointed by the Commissioner of Insurance. The term of employment and salary of the Executive Administrator shall be set by the Commissioner of Insurance upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

The Executive Administrator may be removed from office by the Commissioner of Insurance, upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits, and any vacancy in the office of Executive Administrator may be filled by the Commissioner of Insurance with the term of employment and salary set upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits.

(c) to (e) Repealed by Session Laws 1987, c. 857, s. 5.

(f) The Executive Administrator shall appoint the Deputy Executive Administrator and may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor or with an optional prepaid hospital and medical benefit plan or with a preferred provider of institutional or professional hospital and medical care or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits.

(g) The Executive Administrator shall be responsible for:

(1) Cost management programs;
(2) Education and illness prevention programs;
(3) Training programs for Health Benefit Representatives;
(4) Membership functions;
(5) Long-range planning;
(6) Provider and participant relations; and
(7) Communications.

Managed care practices used by the Executive Administrator in cost management programs are subject to the requirements of G.S. 58-3-191, 58-3-221, 58-3-223, 58-3-235, 58-3-240, 58-3-245, 58-3-250, 58-3-265, 58-67-88, and 58-50-30.

(h) The Executive Administrator shall make reports and recommendations on the Plan to the President of the Senate, the Speaker of the House of Representatives and the Committee on Employee Hospital and Medical Benefits. (1985, c. 732, s. 10; 1985 (Reg. Sess., 1986), c. 1020, s. 20; 1987, c. 857, s. 5; 1991, c. 427, s. 2; 2000-141, s. 2; 2001-446, s. 6; 2004-124, s. 31.27(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.27(a), effective July 1, 2004, in subsection (a), added "and a Deputy Executive Administrator" to the end of the first sentence and added the second sentence; and inserted "shall appoint the Deputy Executive Administrator and" near the beginning of subsection (f).

§ 135-39.6A. Premiums set.

(a) The Executive Administrator and Board of Trustees shall, from time to time, establish premium rates for the Comprehensive Major Medical Plan except as they may be established by the General Assembly in the Current Operations Appropriations Act, and establish regulations for payment of the premiums. Premium rates shall be established for coverages where Medicare is the primary payer of health benefits separate and apart from the rates established for coverages where Medicare is not the primary payer of health benefits.

(b) The Executive Administrator and Board of Trustees shall establish separate premium rates for the long-term care benefits provided by Part 4 of this Article if the benefits are administered on a self-insured basis.

(c) The Executive Administrator and Board of Trustees shall establish premium rates for benefits provided under Part 5 of this Article. The Department of Health and Human Services shall, from State and federal appropriations and from any other funds made available for the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes, make payments to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan as determined by the Plan for its administration, claims processing, and other services authorized to provide coverage for acute medical care for children eligible for benefits provided under Part 5 of this Article.

(d) In setting premiums for firemen, rescue squad workers, and members of the national guard, and their eligible dependents, the Executive Administrator and Board of Trustees shall establish rates separate from those affecting active and retired teachers, State employees, and their dependents enrolled in the Plan. In setting premiums for employees of the North Carolina Symphony Society, Inc., and their eligible dependents, the Executive Administrator and Board of Trustees shall establish rates separate from those affecting active teachers and State employees and their dependents enrolled in the Plan. These separate premium rates shall include rate factors for incurred but unreported claim costs, for the effects of adverse selection from voluntary participation in the Plan, and for any other actuarially determined measures needed to protect the financial integrity of the Plan for the benefit of its served employees, retired employees, and their eligible dependents.

(e) The total amount of premiums due the Plan from charter schools as employing units, including amounts withheld from the compensation of Plan members, that is not remitted to the Plan by the fifteenth day of the month following the due date of remittance shall be assessed interest of one and one-half percent (1 ½%) of the amount due the Plan, per month or fraction thereof, beginning with the sixteenth day of the month following the due date of the remittance. The interest authorized by this section shall be assessed until the premium payment plus the accrued interest amount is remitted to the Plan. The remittance of premium payments under this section shall be presumed to have been made if the remittance is postmarked in the United States mail on a date not later than the fifteenth day of the month following the due date of the remittance. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1985, c. 732,

s. 52; 1991, c. 427, s. 5; 1997-468, s. 4; 1998-1, s. 4(e); 1999-237, s. 28.29(h); 2003-69, s. 2; 2004-124, s. 31.21(c).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.21(c), effective July 1, 2004, in subsection (d), substituted "active and retired teachers, State employees, and their dependents enrolled in" for "other members" in the first sentence and inserted the second sentence.

Part 3. Comprehensive Major Medical Plan.

§ 135-40. Undertaking.

Local Modification. — Bladen: 2004-124, s. 31.26(a) (expires June 30, 2006); Cherokee: 2004-124, s. 31.26(a) (expires June 30, 2006); Rutherford: 2004-124, s. 31.26(a) (expires June 30, 2006); Washington: 2004-124, s. 31.26(a) (expires June 30, 2006); and Wilkes: 2004-124, s. 31.26(a) (expires June 30, 2006).

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-161, s. 31.1, provides: "The Committee on Employee Hospital and Medical Benefits may study the following issues pertaining to benefits under the Teachers' and State Employees' Comprehensive Major Medical Plan ('Plan'):

"(1) Whether to repeal or otherwise modify G.S. 135-40.6(7) that limits coverage for examination and supervision of a normal newborn infant to only when the mother of the infant is receiving maternity benefits under the Plan.

"(2) Whether to adopt a federally qualified health reimbursement arrangement as an additional component of the Plan.

"(3) Whether deductibles and co-payment amounts applicable under the Plan should be based on income of the Plan member, with lower-income Plan members paying less than higher-income Plan members."

§ 135-40.1. General definitions.

As used in Parts 2 and 3 of this Article, the following terms have the meaning specified as follows:

(1) Chemical Dependency. — The term "chemical dependency" means the pathological use or abuse of alcohol or other drugs in a manner or to a degree that produces an impairment in personal, social or occupational functioning and which may, but need not, include a pattern of tolerance and withdrawal.

(1a) Covered Services. — Any medically necessary, reasonable, and customary items of service, at least a portion of the expense of which is covered under at least one of the plans covering the person for whom claim is made or service provided. It shall be synonymous with allowable expenses, and with benefit or benefits.

(1b) Clinical Trials. — Patient research studies designed to evaluate new treatments, including prescription drugs. Regardless of the type of trial phases covered by the Plan, all covered trials must involve the treatment of life-threatening medical conditions, must be clearly superior to available noninvestigational treatment alternatives, and must have clinical and preclinical data that shows the trials will be at least as effective as noninvestigational alternatives. Trials must also involve determinations by treating physicians, relevant scientific

data, and opinions of experts in relevant fields of medicine. Covered trials must be approved by the National Institutes of Health, a National Institutes of Health cooperative group or center, the U. S. Food and Drug Administration, the U.S. Department of Defense, or the U.S. Department of Veterans Affairs. The Plan may also cover clinical trials sponsored by other entities. Trials must also be approved by applicable qualified institutional review boards. All covered trials must be conducted in and by facilities and personnel that maintain a high level of expertise because of their training, experience, and volume of patients. To be covered by the Plan, patients participating in clinical trials must meet substantially all protocol requirements of the trials and exercise informed consent in the trials. Only medically necessary costs of health care services involved in treatments provided to patients for the purpose of the trials are covered by the Plan to the extent that such costs are not customarily funded by national agencies, commercial manufacturers, distributors, or other such providers. Clinical trial costs not covered by the Plan include, but are not limited to, the costs of services that are not health care services and costs associated with managing research in the trials. The Plan shall not exclude benefits for covered clinical trials if the proposed treatment is the only appropriate protocol for the condition being treated.

(2) Deductible. — Deductible shall mean an amount of covered expenses during a fiscal year which must be incurred after which benefits (subject to the deductible) becomes payable. The deductible for an employee, retired employee and/or his or her dependents shall be three hundred fifty dollars ($350.00) for each fiscal year.

The deductible applies separately to each covered individual in each fiscal year, subject to an aggregate maximum of one thousand fifty dollars ($1,050) per employee and child(ren) or employee and family coverage contract in any fiscal year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period.

(3) Dependent Child. — A natural, legally adopted, or foster child of the employee and/or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child's maintenance and support. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child's maintenance and support on his or her 18th birthday.

A foster child is covered (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the Claims Processor accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of, the child(ren), are not eligible participants.

Coverage may be extended beyond the 19th birthday under the following conditions:

a. If the dependent is a full-time student, between the ages of 19 and 26, who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction.

b. The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to develop before the dependent's 26th birthday if the dependent was covered by the Plan in accordance with G.S. 135-40.1(3)a.

Dependent children of firemen, rescue squad workers, and members of the national guard are subject to the same terms and conditions as are other dependent children covered by this subdivision.

(4) Doctor. — A doctor of medicine, a doctor of osteopathy licensed to practice medicine or surgery by the Board of Medical Examiners of the state in which he or she practices, a doctor of dentistry, a doctor of podiatry or surgical chiropody, a doctor of optometry, a doctor of chiropractic, or a doctor of psychology who is licensed or certified in the State and has a doctorate practice degree in psychology and at least two years' clinical experience in a recognized health setting or has met the standards of the National Register of Health Services Providers in Psychology, each of whom is licensed to practice by the state in which he or she performs any service covered by this Plan, and who regularly charges and collects fees in his or her own right.

(5) Employee. — Any permanent full-time or permanent part-time regular employee (designated as half-time or more) of an employing unit.

(6) Employing Unit. — A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school in accordance with Part 6A of Chapter 115C of the General Statutes whose board of directors elects to become a participating employer in the Plan under G.S. 135-40.3A. Bona fide fire departments, rescue or emergency medical service squads, and national guard units are deemed to be employing units for the purpose of providing benefits under this Article. The North Carolina Symphony Society, Inc., is deemed to be an employing unit for the purpose of providing benefits under this Article.

(7) Enrollment. — New employees must enroll themselves and their dependents within 30 days from the date of employment or from first becoming eligible on a noncontributory basis. Coverage may become effective on the first day of the month following date of entry on payroll or on the first day of the following month. New employees not enrolling themselves and their dependents within 30 days, or not adding dependents when first eligible as provided herein may enroll on the first day of any month but will be subject to a 12-month waiting period for preexisting health conditions, except for employees who elect to change their coverage in accordance with rules established by the Executive Administrator and Board of Trustees for optional prepaid hospital and medical benefit plans. Children born to covered employees having coverage type (2), or (3), as outlined in G.S. 135-40.3(d) shall be automatically covered at the time of birth without

any waiting period for preexisting health conditions. Children born to covered employees having coverage type (1) shall be automatically covered at birth without any waiting period for preexisting health conditions so long as the Claims Processor receives notification within 30 days of the date of birth that the employee desires to change from coverage (1) to coverage type (2), or (3), provided that the employee pays any additional premium required by the coverage type selected retroactive to the first day of the month in which the child was born.

Newly acquired dependents (spouse/child) enrolled within 30 days of becoming an eligible dependent will not be subject to the 12-month waiting period for preexisting conditions. A dependent can become qualified due to marriage, adoption, entering a foster child relationship, due to the divorce of a dependent child or the death of the spouse of a dependent child, and at the beginning of each legislative session (applies only to enrolled legislators). Effective date for newly acquired dependents if application was made within the 30 days can be the first day of the following month. Effective date for an adopted child can be date of adoption, or date of placement in the adoptive parent's home, or the first of the month following the date of adoption or placement. Firemen, rescue squad workers, and members of the national guard, and their eligible dependents are subject to the same terms and conditions as are new employees and their dependents covered by this subdivision. Enrollments in these circumstances must occur within 30 days of eligibility to enroll.

(7a) Experimental/Investigational Medical Procedures. — The use of a service, supply, drug, or device not recognized as standard medical care for the condition, disease, illness, or injury being treated as determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor. Determinations are made after independent review of scientific data. Opinions of experts in a particular field and opinions and assessments of nationally recognized review organizations shall also be considered by the Plan but are not determinative or conclusive. The fact that an experimental/investigational treatment is the only available treatment for a particular condition will not result in coverage if the treatment is experimental/investigational in the treatment of the particular condition, nor is it relevant for purposes of coverage that the member has tried other more conventional therapies without success. The following criteria are the basis for determination that a service or supply is investigational:

a. Services or supplies requiring federal or other governmental body approval, such as drugs and devices that do not have market approval from the Food and Drug Administration (FDA) or final approval from any other governmental regulatory body for use in treatment of the condition being treated, or are not recognized for the treatment of a condition in one of the standard reference compendia or in generally accepted peer-reviewed medical literature;

b. There is insufficient or inconclusive scientific evidence in peer review medical literature to permit the Plan's evaluation of the therapeutic value of the service or supply;

c. There is inconclusive evidence that the service or supply has a beneficial effect on health outcomes;

d. Is provided as part of a research or phase I clinical or phase II clinical trial not approved by the Plan;

e. Are provided pursuant to a written protocol or other document that lists an evaluation of the service's safety, toxicity, or efficacy as among its objectives;

f. Are subject to approval or review of an Institutional Review Board or other body that approves or reviews research; or

g. Are provided pursuant to informed consent documents that describe the service as experimental, investigational, or part of a research study.

(7b) Fiscal Year. — The period beginning July 1 and ending on June 30 of the succeeding calendar year.

(7c) Firemen. — Eligible firemen as defined by G.S. 58-86-25 who belong to a bona fide fire department as defined by G.S. 58-86-25 and who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Firemen shall also include members of the North Carolina Firemen and Rescue Squad Workers' Pension Fund who are in receipt of a monthly pension, who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Comprehensive group health insurance and other benefit coverage consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. Comprehensive group health insurance and other benefit coverage includes Medicare benefits, CHAMPUS benefits, and other Uniformed Services benefits. North Carolina fire departments or their respective governing bodies shall certify the eligibility of their firemen to the Plan for their participation in its benefits prior to enrollment.

(8) Health Benefits Representative. — The employee designated by the employing unit to administer the Comprehensive Major Medical Plan for the unit and its employees. The HBR is responsible for enrolling new employees, reporting changes, explaining benefits, reconciling group statements and remitting group fees. The State Retirement System is the Health Benefits Representative for retired members.

(9) Home Health Aide. — An individual who provides medical or therapeutic care and who reports to and is under the direct supervision of a Home Health Care Agency.

(10) Home Health Care Agency. — An agency which is constituted, licensed and operated in accordance with the laws pertaining to agencies providing home health care.

(11) Home Health Care Coverage. — Coverage for home care and treatment established and approved in writing by a physician for an individual whom continual hospital confinement would be required without the care and treatment specified by this coverage.

(12) Hospital. — An institution which meets fully all the following criteria:

a. A general medical and surgical hospital, including eye, ear, nose and throat, maternity, pediatric, tuberculosis, or mental hospital, licensed as such by the applicable State agency.

b. It is primarily engaged in providing — for compensation from its patients and on an inpatient basis — diagnostic and therapeutic facilities for the surgical and medical diagnosis, treatment and care of injured and sick persons by or under the supervision of the staff of physicians;

c. It continuously provides 24-hour-a-day nursing service by registered graduate nurses; and

d. It is not, other than incidentally, a place for rest, a place for the aged, a place for drug addicts, a place for alcoholics, a nursing home, a hotel, or the like.

Hospitals classified and accredited as psychiatric hospitals by the Joint Commission on Accreditation of Healthcare Organizations will be deemed to be hospitals for the purpose of this Plan.

(13) Medicare. — The Health Insurance for the Aged and Disabled Program under Title XVIII of the Social Security Act as such act was amended by the Social Security Amendments of 1965 (Public Law 89-97), as such program is currently constituted and as it may be later amended.

(13a) Plan. — The Teachers' and State Employees' Comprehensive Major Medical Plan.

(13b) National guard members. — Members of the North Carolina army and air national guard who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Members of the North Carolina army and air national guard include those who are actively serving in the national guard as well as former members of the national guard who have completed 20 or more years of service in the national guard but have not attained the minimum age to begin receipt of a uniformed service military retirement benefit. Comprehensive group health insurance and other benefit coverage consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. Comprehensive group health insurance and other benefit coverage includes Medicare benefits, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, and other Uniformed Services benefits. North Carolina national guard units shall certify the eligibility of their members to the Plan for their participation in its benefits prior to enrollment.

(14) Predecessor Plan. — The Hospital and Medical Benefits for the Teachers' and State Employees' Retirement System of the State of North Carolina.

(15) Preexisting Condition. — A condition, disease, illness or injury diagnosed and treated within six months prior to the effective date of coverage.

(16) Pregnancy. — Shall include resulting childbirth, miscarriage or abortion.

(16a) Rescue squad workers. — Eligible rescue squad workers as defined by the provisions of G.S. 58-86-30 who belong to a rescue or emergency medical services squad as defined by the same statute and who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Rescue squad workers shall also include members of the North Carolina Firemen and Rescue Squad Workers' Pension Fund who are in receipt of a monthly pension, who are not eligible for any type of comprehensive group health insurance or other comprehensive group health benefit coverage, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months. Comprehensive group health insurance and other

benefit coverage consists of inpatient and outpatient hospital and medical benefits, as well as other outpatient medical services, prescription drugs, medical supplies, and equipment that are generally available in the health insurance market. Comprehensive group health insurance and other benefit coverage includes Medicare benefits, CHAMPUS benefits, and other Uniformed Services benefits. North Carolina rescue or emergency medical services squads or their respective governing bodies shall certify the eligibility of their rescue squad workers to the Plan for their participation in its benefits prior to enrollment.

(17) Retired Employee (Retiree). — Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled. On and after January 1, 1988, a retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for group benefits under this Part as a retired employee or retiree.

(17a) Skilled Care. — Medically necessary services that can only be rendered under State law or regulation by licensed health professionals such as a medical doctor, physician's assistant, physical therapist, occupational therapist, speech therapist, certified clinical social worker, licensed clinical social worker, certified nurse midwife, licensed practical nurse, or registered nurse.

(18) Skilled Nursing Facility. — An institution licensed under applicable State laws and primarily engaged in providing to inpatients, under the supervision of a doctor and a registered professional nurse, skilled nursing care and related services on a 24-hour basis, and rehabilitative services.

(19) Usual, Customary and Reasonable. — The meaning of the term "UCR" shall be developed from criteria used for determining reasonable charges for services, including usual preoperative examination and customary postoperative care and care of usual complications, and shall be based on the usual charge made by an individual doctor for his or her private patients for a particular service, or the customary charge within the range of usual fees charged by most doctors of similar skill and training in North Carolina for the comparable service, whichever is the lower. A fee is reasonable if it meets the above two criteria. In cases of unusual complexity and cases involving supplemental skills of two or more doctors, reasonable charges will be determined by the Claims Processor upon advice of its medical advisors. The Executive Administrator and Board of Trustees may update usual, customary and reasonable charges, or other such comparable allowances, semi-annually for physicians who accept the Plan's UCR or other comparable allowances as payment in full, other than for the Plan's deductibles, coinsurance, or other amounts to be paid by members of the Plan; otherwise, the Executive Administrator and Board of Trustees shall not update usual, customary and reasonable charges, or other such comparable allowances more frequently than on an annual basis. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 922, ss. 4, 21.1, 21.2, 21.7; 1983 (Reg. Sess., 1984), c. 1110, s. 10; 1985, c. 192, ss. 7, 16.1, 16.2; c. 732, ss. 12, 19, 25, 26; 1985 (Reg. Sess., 1986), c. 1020, ss. 5(a), 9, 20, 24, 27; 1987, c. 564, s. 17; c. 857, ss. 9, 10; 1989, c. 752, s. 22(c), (d); 1991, c. 427, ss. 1(a), 9, 18, 36; 1995 (Reg. Sess., 1996), c. 731, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 28.23(a);

1997-456, s. 27; 1997-512, ss. 1, 2, 9, 12, 16, 18; 1998-212, ss. 9.14A(d), 28.29(a), (b); 1999-237, s. 28.29(b)-(e); 2001-253, s. 1(b); 2001-487, s. 40(m); 2004-124, s. 31.21(a).)

Local Modification. — Bladen: 2004-124, s. 31.26(b)-(e) (expires June 30, 2006); Cherokee: 2004-124, s. 31.26(b)-(e) (expires June 30, 2006); Rutherford: 2004-124, s. 31.26(b)-(e) (expires June 30, 2006); Washington: 2004-124, s. 31.26(b)-(e) (expires June 30, 2006); and Wilkes: 2004-124, s. 31.26(b)-(e) (expires June 30, 2006).

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 31.21(a), effective July 1, 2004, added the last sentence in subdivision (6).

§ 135-40.2. Eligibility.

(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

(1) All permanent full-time employees of an employing unit who meet the following conditions:

a. Paid from general or special State funds, or

b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(2) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985.

(2a) Surviving spouses of:

a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and

b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b).

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(4) Members of the General Assembly.

(5) Notwithstanding the provisions of subsection (e) of this section, employees on official leave of absence while completing a full-time program in school administration in an approved program as a Principal Fellow in accordance with Article 5C of Chapter 116 of the General Statutes.

(6) Notwithstanding the provisions of G.S. 135-40.11, employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit

and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination.

(7) Any member enrolled pursuant to subdivision (1) or (1a) of this subsection who is on approved leave of absence with pay or receiving workers' compensation.

(8) Employees on approved Family and Medical Leave.

(a1) Repealed by Session Laws 2000-141, s. 6(b), effective August 2, 2000, and by Session Laws 2000-184, s. 1(b), effective August 1, 2000.

(a2) The following persons are eligible for coverage under the Plan on a partially contributory basis, subject to the provisions of G.S. 130-40.3:

(1) A school employee in a job-sharing position as defined in G.S. 115C-326.5(b). If these employees elect to participate in the Plan, the employing unit shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual employees shall pay the balance of the total noncontributory premiums not paid by the employing unit.

(2) Employees of the North Carolina Symphony Society, Inc., their eligible spouses, and eligible dependent children.

(b) The following person shall be eligible for coverage under the Plan, on a fully contributory basis, subject to the provisions of G.S. 135-40.3:

(1) Repealed by Session Laws 1983, c. 761, s. 255.

(2) Former members of the General Assembly who enroll before October 1, 1986.

(2a) For enrollments after September 30, 1986, former members of the General Assembly if covered under the Plan at termination of membership in the General Assembly. To be eligible for coverage as a former member of the General Assembly, application must be made within 30 days of the end of the term of office. Only members of the General Assembly covered by the Plan at the end of the term of office are eligible. If application is not made within the specified time period, the member forfeits eligibility.

(3) Surviving spouses of deceased former members of the General Assembly who enroll before October 1, 1986.

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(3b) For enrollments after September 30, 1986, surviving spouses of deceased former members of the General Assembly, if covered under the Plan at the time of death of the former member of the General Assembly.

(4) All permanent part-time employees (designated as half-time or more) of an employing unit who meets the conditions outlined in subdivision (a)(1)a above, and who are not covered by the provisions of G.S. 135-40.2(a)(1).

(4a) Repealed by Session Laws 1997-512, s. 22.

(5) The spouses and eligible dependent children of enrolled teachers, State employees, retirees, former members of the General Assembly, former employees covered by the provisions of G.S. 135-40.2(a)(6), Disability Income Plan beneficiaries, enrolled continuation members, and members of the General Assembly. Spouses of surviving dependents are not eligible, nor are dependent children if they were not

covered at the time of the member's death. Surviving spouses may cover their dependent children provided the children were enrolled at the time of the member's death or enroll within 30 days of the member's death.

(6) Blind persons licensed by the State to operate vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, who are:

a. Operating such a vending facility;

b. Former operators of such a vending facility whose service as an operator would have made these operators eligible for an early or service retirement allowance under Article 1 of this Chapter had they been members of the Retirement System; and

c. Former operators of such a vending facility who attain five or more years of service as operators and who become eligible for and receive a disability benefit under the Social Security Act upon cessation of service as an operator.

Spouses, dependent children, surviving spouses, and surviving dependent children of such members are not eligible for coverage.

(7) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(j).

(8) Surviving spouses of deceased retirees and surviving spouses of deceased teachers, State employees, and members of the General Assembly provided the death of the former Plan member occurred after September 30, 1986, and the surviving spouse was covered under the Plan at the time of death.

(9) Repealed by Session Laws 1987, c. 857, s. 11.1.

(10) Any eligible dependent child of the deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, provided the child was covered at the time of death of the retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary, (or was in posse at the time and is covered at birth under this Part), or was covered under the Plan on September 30, 1986. An eligible surviving dependent child can remain covered until age 19, or age 26 if a full-time student, or indefinitely if certified as incapacitated under G.S. 135-40.1(3)b.

(11) Repealed by Session Laws 2000-141, s. 6(b), effective August 2, 2000, and by Session Laws 2000-184, s. 1(b), effective August 1, 2000.

(12) Notwithstanding the provisions of G.S. 135-40.11, former employees covered by the provisions of G.S. 135-40.2(a)(6), and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to G.S. 135-40.2(a)(6), following expiration of the former employees' coverage provided by G.S. 135-40.2(a)(6). Election of coverage under this subdivision shall be made within 90 days after the termination of coverage provided under G.S. 135-40.2(a)(6).

(13) Firemen, rescue squad workers, and members of the national guard, their eligible spouses, and eligible dependent children.

(c) No person shall be eligible for coverage as a dependent if eligible as an employee or retired employee, except when a spouse is eligible on a fully contributory basis. In addition, no person shall be eligible for coverage as a dependent of more than one employee or retired employee at the same time.

(d) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes, provided the former employee has at least five years of retirement membership service, shall be eligible for the benefit provisions of this Plan, as

set forth in this Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter.

(e) Employees on official leave of absence without pay may elect to continue this group coverage at group cost provided that they pay the full employee and employer contribution through the employing unit during the leave period.

(f) For the support of the benefits made available to any member vested at the time of retirement, their spouses or surviving spouses, and the surviving spouses of employees who are receiving a survivor's alternate benefit under G.S. 135-5(m) of those associations listed in G.S. 135-27(a), licensing and examining boards under G.S. 135-1.1, the North Carolina Art Society, Inc., and the North Carolina Symphony Society, Inc., each association, organization or board shall pay to the Plan the full cost of providing these benefits under this section as determined by the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan. In addition, each association, organization or board shall pay to the Plan an amount equal to the cost of the benefits provided under this section to presently retired members of each association, organization or board since such benefits became available at no cost to the retired member.

(g) An eligible surviving spouse and any eligible surviving dependent child of a deceased retiree, teacher, State employee, member of the General Assembly, former member of the General Assembly, or Disability Income Plan beneficiary shall be eligible for group benefits under this section without waiting periods for preexisting conditions provided coverage is elected within 90 days after the death of the former plan member. Coverage may be elected at a later time, but will be subject to the 12-month waiting period for preexisting conditions and will be effective the first day of the month following receipt of the application.

(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan. The Executive Administrator and Board of Trustees may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subsection.

(i) Any employee receiving benefits pursuant to Article 6 of this Chapter when the employee has less than five years of retirement membership service, or an employee on leave without pay due to illness or injury for up to 12 months, is entitled to continued coverage under the Plan for the employee and any eligible dependents by paying one hundred percent (100%) of the cost. (1981 (Reg. Sess., 1982), c. 1398, s. 6; 1983, c. 499; c. 761, ss. 252-255; c. 867, s. 4; c. 922, s. 5; 1985, c. 400, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 1020, s. 29(a)-(*l*); 1987, c. 738, ss. 29(n), 36(a), 36(b); c. 809, ss. 3, 4; c. 857, ss. 11(a), 11.1, 11.2, 12; 1989, c. 752, s. 22(e), (f); 1989 (Reg. Sess., 1990), c. 1074, s. 22(a); 1993, c. 321, s. 85(b); 1995, c. 278, s. 1; c. 507, ss. 7.21(a)-(c), 7.28(a)-(c); 1997-443, s. 11A.118(a); 1997-512, ss. 17, 19-27; 1999-237, s. 28.29(f); 2000-141, ss. 6(a), (b); 2000-184, ss. 1(a),(b), 3; 2001-487, s. 86(a); 2002-174, s. 4; 2003-358, s. 4; 2004-124, s. 31.21(b); 2004-199, s. 34(b).)

Local Modification. — Bladen: 2004-124, s.31.26(g)-(i) (expires June 30, 2006); Cherokee: 2004-124, s.31.26(g)-(i) (expires June 30, 2006); Rutherford: 2004-124, s.31.26(g)-(i) (expires June 30, 2006); Washington: 2004-124, s.31.26(g)-(i) (expires June 30, 2006); and Wilkes: 2004-124, s.31.26(g)-(i) (expires June 30, 2006).

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.21(b), effective July 1, 2004, rewrote subsection (a2).

Session Laws 2004-199, s. 34(b), effective August 17, 2004, substituted "G.S. 115C-326.5(b)" for "G.S. 115C-302.2(b)" in subsection (a2).

§ 135-40.3. Effective dates of coverage.

Local Modification. — Bladen: 2004-124, s. 31.26(f) (expires June 30, 2006); Cherokee: 2004-124, s. 31.26(f) (expires June 30, 2006); Rutherford: 2004-124, s. 31.26(f) (expires June 30, 2006); Washington: 2004-124, s. 31.26(f) (expires June 30, 2006); and Wilkes: 2004-124, s. 31.26(f) (expires June 30, 2006).

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 135-40.3A. Optional participation for charter schools operated by private nonprofit corporations.

Editor's Note. —

Session Laws 2004-164, s. 1, provides: "Notwithstanding the time limitations contained in G.S. 135-5.3 and G.S. 135-40.3A, the boards of directors of (i) New Century High School in Saxapahaw; (ii) Lake Norman Charter School in Huntersville; (iii) Exploris Middle School in Raleigh, a charter school division of Exploris; (iv) Magellan Charter School in Raleigh; (v) American Renaissance Charter School in Statesville; and (vi) Healthy Start Academy in Durham may elect to become participating employers in the Teachers' and State Employees' Retirement System in accordance with Article 1 of Chapter 135 of the General Statutes and may also elect to become participating employing units in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in accordance with Article 3 of Chapter 135. The elections authorized by this section shall be made no later than 30 days after the effective date of this act and shall be made in accordance with all other requirements of G.S. 135-5.3 and G.S. 135-40.3A."

§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).

Editor's Note. —

Session Laws 2004-161, s. 31.1, provides: "The Committee on Employee Hospital and Medical Benefits may study the following issues pertaining to benefits under the Teachers' and State Employees' Comprehensive Major Medical Plan ('Plan'):

"(1) Whether to repeal or otherwise modify G.S. 135-40.6(7) that limits coverage for examination and supervision of a normal newborn infant to only when the mother of the infant is receiving maternity benefits under the Plan.

"(2) Whether to adopt a federally qualified health reimbursement arrangement as an additional component of the Plan.

"(3) Whether deductibles and co-payment amounts applicable under the Plan should be based on income of the Plan member, with lower-income Plan members paying less than higher-income Plan members."

§ 135-40.7B. Special provisions for chemical dependency and mental health benefits.

(a) Except as otherwise provided in this section, benefits for the treatment of mental illness and chemical dependency are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally.

(b) Notwithstanding any other provision of this Part, the following necessary services for the care and treatment of chemical dependency and mental illness shall be covered under this section: allowable institutional and professional charges for inpatient care, outpatient care, intensive outpatient program services, partial hospitalization treatment, and residential care and treatment:

(1) For mental illness treatment:
   a. Licensed psychiatric hospitals;
   b. Licensed psychiatric beds in licensed general hospitals;
   c. Licensed residential treatment facilities that have 24-hour on-site care provided by a registered nurse and that hold current accreditation by a national accrediting body approved by the Plan's mental health case manager;
   d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities;
   e. Licensed intensive outpatient treatment programs; and
   f. Licensed partial hospitalization programs.

(2) For chemical dependency treatment:
   a. Licensed chemical dependency units in licensed psychiatric hospitals;
   b. Licensed chemical dependency hospitals;
   c. Licensed chemical dependency treatment facilities;
   d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities;
   e. Licensed intensive outpatient treatment programs;
   f. Licensed partial hospitalization programs; and
   g. Medical detoxification facilities or units.

(c) Notwithstanding any other provisions of this Part, the following providers and no others may provide necessary care and treatment for mental health under this section:

(1) Psychiatrists who have completed a residency in psychiatry approved by the American Council for Graduate Medical Education and who are licensed as medical doctors or doctors of osteopathy in the state in which they perform and services covered by the Plan;
(2) Licensed or certified doctors of psychology;
(3) Certified clinical social workers and licensed clinical social workers;
(3a) Licensed professional counselors;
(4) Certified clinical specialists in psychiatric and mental health nursing;
(4a) Nurses working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
(5) Repealed by Session Laws 1997-512, s. 14.
(6) Licensed psychological associates;
(7), (8) Repealed by Session Laws 1997-512, s. 14.
(9) Certified fee-based practicing pastoral counselors;
(10) Licensed physician assistants under the supervision of a licensed psychiatrist and acting pursuant to G.S. 90-18.1 or the applicable laws and rules of the area in which the physician assistant is licensed or certified; and
(11) Licensed marriage and family therapists.

(c1) Notwithstanding any other provisions of this Part, the following providers and no others may provide necessary care and treatment for chemical dependency under this section:

(1) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager, in facilities described in subdivision (b)(2) of this section, in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of Chapter 122C of the General Statutes or in North Carolina area programs in substance abuse services are authorized to provide treatment for chemical dependency under this section:
   a. Licensed physicians including, but not limited to, physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);
   b. Licensed or certified psychologists;
   c. Psychiatrists;
   d. Certified substance abuse counselors working under the direct supervision of such physicians, psychologists, or psychiatrists;
   e. Licensed psychological associates;
   f. Nurses working under the direct supervision of such physicians, psychologists, or psychiatrists;
   g. Certified clinical social workers and licensed clinical social workers;
   h. Certified clinical specialists in psychiatric and mental health nursing;
   i. Licensed professional counselors;
   j. Certified fee-based practicing pastoral counselors;
   k. Substance abuse professionals certified under Article 5C of Chapter 90 of the General Statutes; and
   l. Licensed marriage and family and therapists.

(2) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager are authorized to provide treatment for chemical dependency in outpatient practice settings:
   a. Licensed physicians including, but not limited to, physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);
   b. Licensed or certified psychologists;
   c. Psychiatrists;
   d. Certified substance abuse counselors working under the direct supervision of such physicians, psychologists, or psychiatrists;
   e. Licensed psychological associates;
   f. Nurses working under the direct supervision of such physicians, psychologists, or psychiatrists;
   g. Certified clinical social workers and licensed clinical social workers;
   h. Certified clinical specialists in psychiatric and mental health nursing;
   i. Licensed professional counselors;
   j. Certified fee-based practicing pastoral counselors;
      1. Substance abuse professionals certified under Article 5C of Chapter 90 of the General Statutes;
   j1. Licensed marriage and family and therapists; and
   k. In the absence of meeting one of the criteria above, the Mental Health Case Manager could consider, on a case-by-case basis, a provider who supplies:

1. Evidence of graduate education in the diagnosis and treatment of chemical dependency, and
2. Supervised work experience in the diagnosis and treatment credentialed provider), and of chemical dependency (with supervision by an appropriately credentialed provider), and
3. Substantive past and current continuing education in the diagnosis and treatment of chemical dependency commensurate with one's profession.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost-effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency.

(d) Benefits provided under this section shall be subject to a case management program for medical necessity and medical appropriateness consisting of (i) precertification of outpatient visits beyond 26 visits each Plan year, (ii) all electroconvulsive treatment, (iii) inpatient utilization review through preadmission and length-of-stay certification for nonemergency admissions to the following levels of care: inpatient units, partial hospitalization programs, residential treatment centers, chemical dependency detoxification and treatment programs, and intensive outpatient programs, (iv) length-of-stay certification of emergency inpatient admissions, and (v) a network of qualified, available providers of inpatient and outpatient psychiatric and chemical dependency treatment. Care which is not both medically necessary and medically appropriate will be noncertified, and benefits will be denied. Where qualified preferred providers of inpatient and outpatient care are reasonably available, use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars ($5,000) per fiscal year to be assessed against each covered individual in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6.

(e) For the purpose of this section, "emergency" is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of an immediate psychiatric or chemical dependency inpatient admission, could imminently result in injury or danger to self or others. (1991, c. 427, s. 32; 1993, c. 464, ss. 3(a), 4; 1995, c. 157, s. 2; c. 406, s. 2; 1997-512, s. 14; 1999-186, s. 1; 1999-199, s. 3; 1999-210, s. 8; 1999-351, s. 7; 2001-258, s. 1; 2001-487, s. 40(n); 2003-368, ss. 2, 3; 2004-124, s. 31.28.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.28, effective July 1, 2004, added "that have 24-hour on-site care provided by a registered nurse and that hold current accreditation by a national accrediting body approved by the Plan's mental health case manager" at the end of subdivision (b)(1)c.

§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.

Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. If the Plan is precluded from exercising its right of subrogation, it may

exercise its rights of recovery to the extent allowed by law. If the Plan recovers damages from a third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection. In the event a Plan member recovers any amounts from a third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan. (2004-124, s. 31.25.)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 33.6, made this section effective July 1, 2004.

Article 4.

Consolidated Judicial Retirement Act.

§ 135-64. Benefits on death after retirement.

(a) In the event of the death of a former member while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-57, or after a former member's sixty-fifth birthday while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-59, there shall be paid to the former member's surviving spouse, if any, an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance that was payable to the former member for the month immediately prior to his month of death, or which would have been so payable had an optional mode of payment not been elected under the provisions of G.S. 135-61, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former member at date of death exceeds that of his spouse.

(b) In the event of the death of a former member prior to his sixty-fifth birthday while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-59, there shall be paid to the former member's surviving spouse, if any, an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance to which the former member would have been entitled under the provisions of G.S. 135-58 if he had remained in service from his disability retirement date to his date of death with no change in his final compensation or status and had then retired, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former member at date of death exceeds that of his spouse.

(c) In the event of the death of a former member while in receipt of a retirement allowance under the provisions of G.S. 135-58 or 135-60 (but not 135-61), if such former member is not survived by a spouse to whom a

retirement allowance is payable under the provisions of subsection (a) or subsection (b) above, there shall be paid to such person as the member shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the member at his date of retirement over the total of the retirement allowances paid to him prior to his death.

(d) In the event that a retirement allowance becomes payable to the spouse of a former member under the provisions of subsection (a) or subsection (b) above, provided that the member's retirement allowance had not been paid under one of the optional modes of payment under G.S. 135-61, and such retirement allowance to the spouse shall terminate on the remarriage or death of the spouse before the total of the retirement allowances paid to the former member and his spouse combined equals the amount of the member's accumulated contributions at his date of retirement, the excess of such accumulated contributions over the total of the retirement allowances paid to the former member and his spouse combined shall be paid in a lump sum to such person as the member shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives.

(e) In the event of the death of a retired former judge while in receipt of a retirement allowance under the provisions of G.S. 135-58(d), there shall be paid to the former judge's surviving spouse, if any, an annual retirement allowance payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former judge and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance that was payable to the former judge for the month immediately prior to his month of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former judge at date of death exceeds that of his spouse.

(f) There shall be paid to the surviving unremarried spouse of any former judge who died prior to January 1, 1974, while in receipt of a retirement allowance under the provisions of a previous system, a retirement allowance which shall commence on January 1, 1974, and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the allowance that would have been payable to the former judge for the month of December 1973, if the previous system had been in effect at his date of retirement and if he had survived to January 1, 1974, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former judge at date of death exceeded that of his spouse.

(g) Upon the death of a retired member on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this

subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(h) Upon the death of a retired member on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(i) Upon the death of a retired member on or after July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars ($9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees. (1973, c. 640, s. 1; 1987, c. 824, s. 4; 1995, c. 509, s. 76; 1998-212, ss. 28.27(b), (c); 2004-147, ss. 5, 6.)

Effect of Amendments. — Session Laws 2004-147, ss. 5 and 6, effective July 1, 2004, and applicable to persons dying on or after that date, inserted "but before July 1, 2004," in the first sentence of subsection (h); and added subsection (i).

§ 135-65. Post-retirement increases in allowances.

(a) Commencing with the post-retirement adjustment, effective July 1, 1974, all retirement allowances payable under the provisions of this Article shall be adjusted annually in accordance with the provisions of G.S. 135-5(o).

(b) Increases in Benefits Paid to Members Retired prior to July 1, 1978. — Notwithstanding subsection (a) of this section, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1978, which shall become payable on July 1, 1979, as otherwise provided in subsection (a) of this section, shall be the current maximum four percent (4%) plus an additional one percent (1%) to a total of five percent (5%) for the year 1979 only. The provisions of this

subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(c) Increases in Benefits Paid to Members Retired prior to July 1, 1979. — Notwithstanding the foregoing provisions, the increase in allowance to each beneficiary on the retirement rolls as of July 1, 1979, which shall become payable on July 1, 1980, shall be the current maximum four percent (4%) plus an additional six percent (6%) to a total of ten percent (10%) for the year 1980-81 only. The provisions of this subsection shall apply also to the allowance of a surviving annuitant of a beneficiary.

(d) Increases in Benefits Paid to Members Retired Prior to July 1, 1982. — From and after July 1, 1983, the retirement allowance to or on account of beneficiaries on the retirement rolls as of July 1, 1982, shall be increased by four percent (4%) of the allowance payable on July 1, 1982, provided the increase in retirement allowances shall be payable in accordance with all requirements, stipulations and conditions set forth in subsection (a) of this section.

(e) Increase in Benefits Paid to Members Retired on or before July 1, 1983. — From and after July 1, 1984, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1983, shall be increased by eight percent (8%) of the allowance payable on July 1, 1983.

(f) From and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1984, shall be increased by four percent (4%) of the allowance payable on July 1, 1984. Furthermore, from and after July 1, 1985, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1984, but before June 30, 1985, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1984, and June 30, 1985.

(g) From and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1985, shall be increased by three and eight-tenths percent (3.8%) of the allowance payable on July 1, 1985. Furthermore, from and after July 1, 1986, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1985, but before June 30, 1986, shall be increased by a prorated amount of three and eight-tenths percent (3.8%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1985 and June 30, 1986.

(h) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986. Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987.

(i) From and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1987, shall be increased by three and six-tenths percent (3.6%) of the allowance payable on July 1, 1987. Furthermore, from and after July 1, 1988, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1987, but before June 30, 1988, shall be increased by a prorated amount of three and six-tenths percent (3.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1987, and June 30, 1988.

(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989.

(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. — From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session).

(*l*) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990.

(m) From and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1991, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1991. Furthermore, from and after July 1, 1992, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1991, but before June 30, 1992, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1991 and June 30, 1992.

(n) From and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1992, shall be increased by one and six-tenths percent (1.6%) of the allowance payable on July 1, 1992. Furthermore, from and after July 1, 1993, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1992, but before June 30, 1993, shall be increased by a prorated amount of one and six-tenths percent (1.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1992, and June 30, 1993.

(o) From and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1993. Furthermore, from and after July 1, 1994, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994.

(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994.

Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995.

(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four- tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996.

(r) From and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1996, shall be increased by four percent (4%) of the allowance payable on June 1, 1997. Furthermore, from and after July 1, 1997, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1996, but before June 30, 1997, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1996, and June 30, 1997.

(s) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998.

(t) From and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1998, shall be increased by two and three-tenths percent (2.3%) of the allowance payable on June 1, 1999. Furthermore, from and after July 1, 1999, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1998, but before June 30, 1999, shall be increased by a prorated amount of two and three-tenths percent (2.3%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1998, and June 30, 1999.

(u) From and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1999, shall be increased by two and six-tenths percent (2.6%) of the allowance payable on June 1, 2000. Furthermore, from and after July 1, 2000, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1999, but before June 30, 2000, shall be increased by a prorated amount of two and six-tenths percent (2.6%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1999, and June 30, 2000.

(v) From and after July 1, 2001, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2000, shall be increased by two percent (2%) of the allowance payable on June 1, 2001. Furthermore, from and after July 1, 2001, the retirement allowance to or on

account of beneficiaries whose retirement commenced after July 1, 2000, but before June 30, 2001, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2000, and June 30, 2001.

(w) From and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2001, shall be increased by one and four-tenths percent (1.4%) of the allowance payable on June 1, 2002. Furthermore, from and after July 1, 2002, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2001, but before June 30, 2002, shall be increased by a prorated amount of one and four-tenths percent (1.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2001, and June 30, 2002.

(x) From and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2002, shall be increased by one and twenty-eight hundredths percent (1.28%) of the allowance payable on June 1, 2003. Furthermore, from and after July 1, 2003, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003, shall be increased by a prorated amount of one and twenty-eight hundredths percent (1.28%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2002, and June 30, 2003.

(y) From and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2003, shall be increased by one and seven-tenths percent (1.7%) of the allowance payable on June 1, 2004, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2004, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2003, but before June 30, 2004, shall be increased by a prorated amount of one and seven-tenths percent (1.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2003, and June 30, 2004. (1973, c. 640, s. 1; 1979, c. 838, s. 104; 1979, 2nd Sess., c. 1137, s. 69; 1983, c. 761, s. 221; 1983 (Reg. Sess., 1984), c. 1034, s. 224; 1985, c. 479, s. 189(b); 1985 (Reg. Sess., 1986), c. 1014, s. 49(b); 1987, c. 738, s. 27(b); 1987 (Reg. Sess., 1988), c. 1086, s. 22(b); 1989, c. 752, s. 41(b); 1989 (Reg. Sess., 1990), c. 1077, ss. 8, 9; 1991 (Reg. Sess., 1992), c. 900, s. 53(c); 1993, c. 321, s. 74(f); 1993 (Reg. Sess., 1994), c. 769, s. 7.30(n); 1995, c. 507, s. 7.22(b); 1996, 2nd Ex. Sess., c. 18, s. 28.21(b); 1997-443, s. 33.22(e); 1998-153, s. 21(b); 1999-237, s. 28.23(b); 2000-67, s. 26.20(e); 2001-424, s. 32.22(b); 2002-126, s. 28.8(c); 2003-284, s. 30.17(b); 2004-124, s. 31.17(b).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.17(b), effective July 1, 2004, added subsection (y).

Article 6.

Disability Income Plan of North Carolina.

§ 135-100. Short title and purpose.

Study Commission on State Disability Income Plan, Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers. — Session Laws 2003-284, ss. 30.20(a) through (i), as amended by Session Laws 2004-78, s. 5, provides: "(a) There is established a Study Commission on the State Disability Income Plan, the State Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers.

"(b) The Commission shall be comprised of 13 members as follows:

"(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.

"(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.

"(3) The State Treasurer, or the Treasurer's designee.

"(4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

"(5) The Chair of the North Carolina Industrial Commission, or the Chair's designee.

"(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

"(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

"Any vacancy shall be filled by the officer who made the original appointment.

"(c) The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

"(d) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission shall terminate the earlier of the delivery of its final report or December 31, 2004.

"(e) The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

"(f) The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

"(g) The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

"(h) The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2005.

"(i) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provi-

sions of subsections (a) through (i) of this section."

§ 135-101. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Base rate of compensation" shall mean the regular monthly rate of compensation not including pay for shift premiums, overtime, or other types of extraordinary pay; in all cases of doubt, the Board of Trustees shall determine what is "base rate of compensation".

(2) "Beneficiary" shall mean any person in receipt of a disability allowance or other benefit as provided in this Article.

(3) "Benefits" shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death on or after the first day of a month, or in the event the short-term disability benefit ends on or after the first day of a month where the beneficiary is eligible and applies for an early service or a service retirement allowance the first of the following month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month.

(4) "Board of Trustees" shall mean the Board of Trustees of the Teachers' and State Employees' Retirement System as provided in G.S. 135-6.

(5) "Compensation" shall mean any compensation as the term is defined in G.S. 135-1(7a).

(6) "Disability" or "Disabled" shall mean the mental or physical incapacity for the further performance of duty of a participant or beneficiary; provided that such incapacity was not the result of terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury.

(7) "Earnings" shall mean all income for personal services rendered or otherwise receivable, including, but not limited to, salaries and wages, fees, commissions, royalties, awards and other similar items and self-employment; in all cases of doubt, the Board of Trustees shall determine what are "earnings".

(8) "Employee" shall mean any employee as the term is defined in G.S. 135-1(10).

(9) "Employer" shall mean any employer as the term is defined in G.S. 135-1(11).

(10) "Medical Board" shall mean the board of physicians as provided in G.S. 135-102(d).

(11) "Member" shall mean any member as the term is defined in G.S. 135-1(13).

(12) "Membership service" shall mean any service as defined in G.S. 135-1(14).

(13) "Participant" shall mean any teacher or employee eligible to participate in the Plan as provided in G.S. 135-103.

(14) "Plan" shall mean the Disability Income Plan of North Carolina as provided in this Article.

(15) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of Article 1 of this Chapter.

(16) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.

(17) "Service" shall mean service as a teacher or employee as defined in G.S. 135-1(10) or G.S. 135-1(25).

(18) "State" shall mean the State of North Carolina.
(19) "Teacher" shall mean any teacher as the term is defined in G.S. 135-1(25).
(20) "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104 and shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in G.S. 135-105.
(21) "Workers' Compensation" shall mean any disability income benefits provided under the North Carolina Workers' Compensation Act, excluding any payments for a permanent partial disability rating. (1987, c. 738, s. 29(q); 1989, c. 717, ss. 7, 8; 1991 (Reg. Sess., 1992), c. 779, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(s); 2003-284, s. 30.20(j); 2004-78, s. 1.)

Effect of Amendments. — Session Laws 2004-78, s. 1, effective retroactively from and after July 1, 2003, rewrote subdivision (6).

§ 135-105. Short-term disability benefits.

(a) Any participant who becomes disabled and is no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided that the participant's employer and attending physician shall certify that such participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must have been earned within 36 calendar months immediately preceding the date of disability and further, salary continuation used during the period as provided in G.S. 135-104 shall count toward the aforementioned one year requirement.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(b) The benefits as provided for in subsection (a) of this section shall commence on the first day following the waiting period and shall be payable for a period of 365 days as long as the participant continues to meet the definition of disability. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of short-term disability benefits; provided further, such election shall not extend the 365 days duration of short-term payments. An election to receive any salary continuation for any part of a given day shall be in lieu of any short-term benefit otherwise payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any short-term benefit otherwise payable.

(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit period as may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent (50%) of 1/12th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand

dollars ($3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. The monthly benefit shall be further reduced by the amount of any payments from the federal Veterans Administration, any other federal agency, or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, that should a participant have earnings in an amount greater than the short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

(d) The provisions of this section shall be administered by the employer and further, the benefits during the first six months of the short-term disability period shall be the full responsibility of and paid by the employer; Provided, further, that upon the completion of the initial six months of the short-term disability period, the employer will continue to be responsible for the short-term benefits to the participant, however, such employer shall notify the Plan, at the conclusion of the short-term disability period or upon termination of short-term disability benefits, if earlier, of the amount of short-term benefits paid and the Plan shall reimburse the employer the amounts so paid.

(e) During the short-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 40 continuous days of service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence unless a different incapacity occurs. The period of rehabilitative employment shall not extend the period of the short-term disability benefits.

(f) A participant or beneficiary of short-term disability benefits or his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, or the employer of the participant or beneficiary, may request the Board of Trustees to have the Medical Board make a determination of eligibility for the short-term disability benefits as provided in this section or to make a preliminary determination of eligibility for the long-term disability benefits as provided in G.S. 135-106. A preliminary determination of eligibility for long-term disability benefits shall not preclude the requirement that the Medical Board make a determination of eligibility for long-term disability benefits.

(g) The Board of Trustees may extend the short-term disability benefits of a beneficiary beyond the benefit period of 365 days for an additional period of not more than 365 days; provided the Medical Board determines that the beneficiary's disability is temporary and likely to end within the extended period of short-term disability benefits. During the extended period of short-term disability benefits, payment of benefits shall be made by the Plan directly to the beneficiary. (1987, c. 738, s. 29(q); 1989, c. 717, s. 10; 1989 (Reg. Sess., 1990), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 779, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(t); 2003-284, s. 30.20(k); 2004-78, s. 2.)

Effect of Amendments. —

Session Laws 2004-78, s. 2, effective retroactively from and after July 1, 2003, in the first paragraph in subsection (a), substituted "no longer able to perform his usual occupation" for "unable to perform the duties of the participant's job or any other available jobs within the State" and "is mentally or physically incapacitated for the further performance of duty" for "cannot perform the duties of the participant's job or any other job available with the State."

§ 135-106. Long-term disability benefits.

(a) **(Effective until August 1, 2005)** Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(a) **(Effective August 1, 2005)** Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of

G.S. 135-106(a) is set out twice. See notes.

Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation

G.S. 135-106(a) is set out twice. See notes.

Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article.

(b) After the commencement of benefits under this section, the benefits payable under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars ($3,900) per month reduced by any primary Social Security disability benefits and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Veterans Administration, any other federal agency or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars ($10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Notwithstanding the foregoing, upon the completion of four years from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan.

(c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability benefits who has earnings during the long-term disability period shall have his long-term disability benefit reduced when the sum of the net long-term disability benefit and the earnings equals one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108. The net long-term benefit shall mean the long-term benefit amount payable as calculated under (b) above, after the reduction for Social Security benefits to which the beneficiary might be entitled. The net long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary exceeding the earnings limitations shall notify the Plan by the fifth of the month succeeding

the month in which the earnings were received of the amount of earnings in excess of the limitations herein provided. Failure to report excess earnings may result in a suspension or termination of benefits as determined by the Board of Trustees.

(d) Notwithstanding the foregoing, a participant or beneficiary who has applied for and been approved by the Medical Board for long-term disability benefits may make an irrevocable election, within 90 days from the date of notification of such approval, and prior to receipt of any long-term disability benefit payments, to forfeit all pending and accrued rights to the long-term disability benefit including any ancillary benefits and retire on an early service retirement allowance or receive a return of accumulated contributions from the Retirement System. (1987, c. 738, s. 29(q); 1989, c. 717, s. 11; 1989 (Reg. Sess., 1990), c. 1032, s. 2; 1991 (Reg. Sess., 1992), c. 779, s. 4; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(u); 2003-284, s. 30.20(l); 2004-78, ss. 3, 4.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective for persons vested on or before August 1, 2005. The second version of subsection (a) set out above is effective for persons vested after August 1, 2005.

Effect of Amendments. —

Session Laws 2004-78, s. 3, effective retroactively from and after July 1, 2003, substituted "mentally or physically incapacitated for the further performance of duty" for "unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience" in the first paragraph and substituted "mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and" for "unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience, the Department of State Treasurer and" in the second paragraph.

Session Laws 2004-78, s. 4, effective August 1, 2005, and applicable only to persons not vested in the disability plan in question on that date, substituted "unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings" for "mentally or physically incapacitated for the further performance of duty" in the first paragraph in subsection (a).

Chapter 136.

Roads and Highways.

Article 2.

Powers and Duties of Department and Board of Transportation.

Sec.
136-18. Powers of Department of Transportation.

Article 14.

North Carolina Highway Trust Fund.

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Article 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

(1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for

a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

(3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.

(4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.

(5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

(6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.

(8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.

(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.

(11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.

(12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and

programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000).

(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Trans-

portation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

(13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic and recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State by means of connecting roads and piers. Such facilities for recreational purposes shall be funded from funds available for safety or enhancement purposes.

(16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous

hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.

(18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.

(19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.

(20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.

(21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.

(22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to

make rules, regulations, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

(23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.

(24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.

(25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

(26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire

by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.

(27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.

(28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.

(29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

(29a) To coordinate with all public and private entities planning schools to provide written recommendations and evaluations of driveway access and traffic operational and safety impacts on the State highway system resulting from the development of the proposed sites. All public and private entities shall, upon acquiring land for a new school or prior to beginning construction of a new school, relocating a school, or expanding an existing school, request from the Department a written evaluation and written recommendations to ensure that all proposed access points comply with the criteria in the current North Carolina Department of Transportation "Policy on Street and Driveway Access". The Department shall provide the written evaluation and recommendations within a reasonable time, which shall not exceed 60 days. This subdivision shall not be construed to require the public or private entities planning schools to meet the recommendations made by the Department.

(30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set

forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).

(31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:

a. Have no scenic value,

b. Have been designated or would be so designated solely to preserve system continuity, and

c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

(32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable.

(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident.

(35) To establish rural planning organizations, as provided in Article 17 of this Chapter.

(36) To oversee the safety of fixed guideway transit systems in the State not regulated by the Federal Railroad Administration, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. § 5330). The Department shall adopt rules in conformance with 49 U.S.C. § 5330 concerning its oversight of the safety of fixed guideway transit systems.

(37) To permit private use of and encroachment upon the right-of-way of a State highway or road for the purpose of construction and maintenance of a privately owned bridge for pedestrians or motor vehicles, if the bridge shall not unreasonably interfere with or obstruct the public use of the right-of-way. Any agreement for an encroachment authorized by this subdivision shall be approved by the Board of Transportation, upon a finding that the encroachment is necessary and appropriate, in the sole discretion of the Board. Locations, plans, and specifications for any pedestrian or vehicular bridge authorized by the Board for construction pursuant to this subdivision shall be approved by the Department of Transportation. For any bridge subject to this subdivision, the Department shall retain the right to reject any plans, specifications, or materials used or proposed to be used, inspect and approve all materials to be used, inspect the construction, maintenance, or repair, and require the replacement, reconstruction, repair, or demolition of any partially or wholly completed bridge that, in the sole discretion of the Department, is unsafe or substandard in design or construction. An encroachment agreement authorized by this subdivision may include a requirement to purchase and maintain liability insurance in an amount determined by the Department of Transportation. The Department shall ensure that any bridge constructed pursuant to this subdivision is regularly inspected for safety. The owner shall have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and shall provide the Department copies of the Bridge Inspection Reports where they shall be kept on file. Any bridge authorized and constructed pursuant to this subdivision shall be subject to all other rules and conditions of the Department of Transportation for encroachments.

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the purpose of advancing the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within seven years of receipt. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2; 1995 (Reg. Sess., 1996), c. 673, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 19.10(a);

1997-428, s. 1; 1997-443, s. 11A.118(a); 2000-123, s. 1; 2000-140, s. 102; 2001-424, s. 27.27; 2003-184, s. 1; 2003-267, s. 1; 2004-168, s. 1.)

Editor's Note. —

Session Laws 2004-199, s. 61, provides: "The Department of Transportation shall install highway directional guide signs at limited-access highway terminals for the nonresidential campuses of colleges or universities located in North Carolina, if the nonresidential campus is located within one mile from the limited-access highway terminal and if the college or university is licensed by the Board of Governors of The University of North Carolina, offers both undergraduate and graduate degree programs, and has a minimum of 350 students enrolled at the nonresidential campus. The college or university requesting the sign installment shall pay for all charges related to the construction of the sign."

Effect of Amendments. —

Session Laws 2004-168, s. 1, effective August 2, 2004, added subdivision (38).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

Editor's Note. —

Session Laws 2004-148, ss. 3(a) and 3(b), provides: "(a) The Secretary of Transportation may adopt temporary rules in accordance with G.S. 150B-21.1 to implement the provisions of G.S. 136-28.1(k) governing the acceptance of bids by electronic means. The authority granted to the Secretary by this section shall expire when the permanent rules necessary to implement this provision are adopted.

"(b) This section becomes effective when it becomes law and expires on June 30, 2005."

CASE NOTES

Lack of Contract. — When the North Carolina Department of Transportation (NCDOT) entered into an agreement with a developer to jointly fund a roadway to be built to state specifications by a contractor selected by the developer, which NCDOT approved, due to the involvement of public funds in the project, and the developer did not pay the contractor, the contractor could not sue NCDOT under G.S. 136-29 because NCDOT was neither a joint venturer nor a partner with the developer, and the contractor had not completed a contract with NCDOT under the provisions of G.S. 136-28.1. Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

Sovereign Immunity. — When the North Carolina Department of Transportation (NCDOT) entered into an agreement with a developer to jointly fund a roadway to be built to state specifications by a contractor selected by the developer, which NCDOT approved, due to the involvement of public funds in the project, the contract was not let pursuant to G.S. 136-28.1, but, rather, was entered into pursuant to G.S. 136-28.6, so when the developer did not pay the contractor, NCDOT was not liable to the contractor because it did not contract with the contractor and, therefore, did not waive its sovereign immunity as to the contractor. Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

§ 136-28.6. Private contract participation by the Department of Transportation.

CASE NOTES

Sovereign Immunity. — When the North Carolina Department of Transportation (NCDOT) entered into an agreement with a developer to jointly fund a roadway to be built to state specifications by a contractor selected by the developer, which NCDOT approved, due to the involvement of public funds in the project, and the developer did not pay the contractor, NCDOT was not liable to the contractor because it did not contract with the contractor and, therefore, did not waive its sovereign immunity as to the contractor. Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

Joint Venture. — When the North Carolina Department of Transportation (NCDOT) entered into an agreement with a developer to jointly fund a roadway to be built to state specifications by a contractor selected by the developer, which NCDOT approved, due to the involvement of public funds in the project, it did not enter into a joint venture with the developer because: (1) no language in G.S. 136-28.6 referred to a joint venture being created in any agreement contemplated by that statute; and (2) if a joint venture could be created, none was created under these facts because NCDOT had unilateral approval of the quality of the work performed by the developer and a joint venture required an equal right, between the joint venturers, to control the means employed to carry out the venture. Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

Partnership. — When the North Carolina Department of Transportation (NCDOT) entered into an agreement with a developer to jointly fund a roadway to be built to state specifications by a contractor selected by the developer, which NCDOT approved, due to the involvement of public funds in the project, it did not enter into a partnership with the developer because: (1) no language in G.S. 136-28.6 referred to a partnership being created in any agreement contemplated by that statute; and (2) if a partnership could be created, none was created under these facts because nothing indicated NCDOT and the developer entered into an agreement as co-owners of any business for profit or that they were otherwise a partnership under G.S. 59-36(b). Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

§ 136-29. Adjustment and resolution of highway construction contract claim.

CASE NOTES

Section Assumes Valid Contract Is Subsisting. —

When the North Carolina Department of Transportation (NCDOT) entered into an agreement with a developer to jointly fund a roadway to be built to state specifications by a contractor selected by the developer, which NCDOT approved, due to the involvement of public funds in the project, and the developer did not pay the contractor, the contractor could not sue NCDOT under G.S. 136-29 because NCDOT was neither a joint venturer nor a partner with the developer, and the contractor had not completed a contract with NCDOT under the provisions of G.S. 136-28.1. Rifenburg Constr., Inc. v. Brier Creek Assocs., Ltd. P'ship, 160 N.C. App. 626, 586 S.E.2d 812, 2003 N.C. App. LEXIS 1926 (2003).

Waiver of Sovereign Immunity. — Section 136-29 requires simply that the contractor's claim arise out of a breach of a contract or some provision thereof so as to entitle the contractor to some relief. Battle Ridge Cos. v. N.C. DOT, 161 N.C. App. 156, 587 S.E.2d 426, 2003 N.C. App. LEXIS 1981 (2003).

Trial court erred in dismissing, pursuant to G.S. 1A-1, Rule 12(b)(6), a construction company's breach of contract action against a state agency; G.S. 136-29 waived the agency's sovereign immunity, as the company complied with the statute and the claims arose under the contract. Battle Ridge Cos. v. N.C. DOT, 161 N.C. App. 156, 587 S.E.2d 426, 2003 N.C. App. LEXIS 1981 (2003).

§ 136-30. Uniform signs and other traffic control devices on highways, streets, and public vehicular areas.

CASE NOTES

Department of Transportation Can Be Found Negligent. — North Carolina Department of Transportation can, under G.S. 136-30(a), be found negligent based on a failure to comply with the United States Department of Transportation's Manuel on Uniform Control Devices for Streets and Highways when erecting a stop sign. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 30.18, provides: "In making loans from the State Infrastructure Bank with funds appropriated in this act, the Department of Transportation shall collect repayments by reducing funds allocated to the borrowers under G.S. 136-41.1."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

CASE NOTES

Establishment of a cartway is a special proceeding under G.S. 136-68, and under G.S. 1-393, the Rules of Civil Procedure are applicable to special proceedings; thus, summary judgment is available in a trial de novo in the superior court of a proceeding under G.S. 136-68. Petitioners were properly granted partial summary judgment on the issue of whether they were entitled to a cartway to access their land for timber, but a jury verdict was required to determine the placement of the cartway and the damages to be awarded respondent, over whose land the cartway would be built. Greene v. Garner, — N.C. App. —, 592 S.E.2d 589, 2004 N.C. App. LEXIS 294 (2004).

When Appeal May Be Taken. —

An order of a clerk of superior court adjudging the right to a cartway is a final judgment and an appeal lies, but there is one limitation to the right to immediately appeal an order granting the right to a cartway. Where the jury of view has been appointed and has filed a written report of its findings, a party must wait until the clerk enters an order confirming, modifying, or rejecting the jury of view's proposed location of the cartway before appealing. Greene v. Garner, — N.C. App. —, 592 S.E.2d 589, 2004 N.C. App. LEXIS 294 (2004).

§ 136-69. Cartways, tramways, etc., laid out; procedure.

CASE NOTES

Three elements must be satisfied before a cartway will be granted: (1) the land in question is used for one of the purposes enumerated in the statute; (2) the land is without adequate access to a public road or other adequate means of transportation affording necessary and proper ingress and egress; and (3) the granting of a private way over the lands of other persons is necessary, reasonable and just. Greene v. Garner, — N.C. App. —, 592 S.E.2d 589, 2004 N.C. App. LEXIS 294 (2004).

§ 136-70. Alteration or abandonment of cartways, etc., in same manner.

CASE NOTES

Applied in Greene v. Garner, — N.C. App. —, 592 S.E.2d 589, 2004 N.C. App. LEXIS 294 (2004).

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.56. Commercial enterprises.

CASE NOTES

Outdoor Advertising. — Outdoor advertising companies who were appealing the revocations of their permits for certain outdoor advertising signs did not show that they would be required to violate certain state statutes, such as G.S. 136-89.56, prohibiting commercial enterprises on certain highways, or G.S. 136.89.58, prohibiting standing vehicles on the right-of-way of certain highways, to measure the height of those signs, nor was this argument raised before the trial court, as required by N.C. R. App. P. 10(b)(1). Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

CASE NOTES

Outdoor Advertising. — Outdoor advertising companies who were appealing the revocations of their permits for certain outdoor advertising signs did not show that they would be required to violate certain state statutes, such as G.S. 136-89.56, prohibiting commercial enterprises on certain highways, or G.S. 136.89.58, prohibiting standing vehicles on the right-of-way of certain highways, to measure the height of those signs, nor was this argument raised before the trial court, as required by Rule 10(b)(1). Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

Article 9.

Condemnation.

§ 136-103. Institution of action and deposit.

CASE NOTES

Cited in DOT v. Charlotte Area Manufactured Hous., Inc., 160 N.C. App. 461, 586 S.E.2d 780, 2003 N.C. App. LEXIS 1822 (2003).

§ 136-119. Costs and appeal.

CASE NOTES

Litigation expenses and costs, etc.

In a condemnation action, there was no statutory authority for taxing a prevailing landowner's appraisal fees as costs against the opposing condemning authority, as G.S. 7A-305(d), which delineated generally recoverable costs, did not mention appraisal fees, and G.S. 136-119, which dealt with highway condemnation costs, did not authorize the taxing of appraisal fees under the facts. DOT v. Charlotte Area Manufactured Hous., Inc., 160 N.C. App. 461, 586 S.E.2d 780, 2003 N.C. App. LEXIS 1822 (2003).

Denial of Fees Held Proper. —

Trial court's decision finding that it did not have the authority to award a successful litigant in a condemnation case the appraisal fees incurred by the litigant as costs taxable against the non-prevailing condemning authority was consistent with precedent of the North Carolina Supreme Court, as well as G.S. 6-20. DOT v. Charlotte Area Manufactured Hous., Inc., 160 N.C. App. 461, 586 S.E.2d 780, 2003 N.C. App. LEXIS 1822 (2003).

Article 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Purpose. — Outdoor Advertising Control Act, G.S. 136-126, was passed to control the placement, maintenance, and removal of billboards adjacent to highways, and delegated to the North Carolina Department of Transportation (NCDOT) authority to further promulgate rules and regulations governing erection and maintenance of billboards, permitting procedures, appeal procedures related to administrative decisions denying or revoking a permit, and administrative procedures for appealing a decision that a billboard was illegal, G.S. 136-130. Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

Effect on Local Regulation. —

Provision of the Gastonia, North Carolina City Code that governed outdoor billboards conflicted with a regulation that was adopted by the North Carolina Department of Transportation (DOT) to implement North Carolina's Outdoor Advertising Control Act, G.S. 136-126 to G.S. 136-140.1, and was preempted by the DOT's regulation. Morris Communs. Corp. v. Bd. of Adjustment, 159 N.C. App. 598, 583 S.E.2d 419, 2003 N.C. App. LEXIS 1530 (2003), appeal dismissed, 357 N.C. 658, 590 S.E.2d 269 (2003).

§ 136-127. Declaration of policy.

CASE NOTES

Regulation for Aesthetic Reasons. — Regulations governing the height of outdoor advertising signs did not violate the substantive due process rights of the outdoor advertising companies which owned them because the regulations did not infringe on a fundamental right, and they were rationally related to the legitimate state interests of safety and aesthetics. Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

Outdoor Advertising Did Not Involve a Fundamental Right. — While the general assembly had declared that outdoor advertising was a legitimate commercial use of private property adjacent to roads and highways, such advertising did not involve a fundamental right, for purposes of a substantive due process analysis of regulations governing the height of billboards. Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

§ 136-128. Definitions.

CASE NOTES

Cited in Morris Communs. Corp. v. Bd. of Adjustment, 159 N.C. App. 598, 583 S.E.2d 419, 2003 N.C. App. LEXIS 1530 (2003), appeal dismissed, 357 N.C. 658, 590 S.E.2d 269 (2003).

§ 136-130. Regulation of advertising.

CASE NOTES

North Carolina Department of Transportation unquestionably had the authority to promulgate a rule governing the height of billboards owned by outdoor advertising companies. Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

Conflict Between Regulation Adopted by Department of Transportation and a Municipal Ordinance. — Provision of the Gastonia (North Carolina) City Code that governed outdoor billboards conflicted with a regulation that was adopted by the North Carolina Department of Transportation (DOT) to implement North Carolina's Outdoor Advertising Control Act, G.S. 136-126 to 136-140.1, and was preempted by the DOT's regulation. Morris Communs. Corp. v. Bd. of Adjustment, 159 N.C. App. 598, 583 S.E.2d 419, 2003 N.C. App. LEXIS 1530 (2003), appeal dismissed, 357 N.C. 658, 590 S.E.2d 269 (2003).

§ 136-134.1. Judicial review.

CASE NOTES

Applied in Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

Article 11B.

Tourist-Oriented Directional Sign Program.

§ 136-140.15. Scope of operations.

Editor's Note. — Session Laws 2004-199, s. 61, provides: "The Department of Transportation shall install highway directional guide signs at limited-access highway terminals for

the nonresidential campuses of colleges or universities located in North Carolina, if the nonresidential campus is located within one mile from the limited-access highway terminal and if the college or university is licensed by the Board of Governors of The University of North Carolina, offers both undergraduate and graduate degree programs, and has a minimum of 350 students enrolled at the nonresidential campus. The college or university requesting the sign installment shall pay for all charges related to the construction of the sign."

Article 14.

North Carolina Highway Trust Fund.

§ 136-175. Definitions.

The following definitions apply in this Article:

(1) Intrastate System. The network of major, multilane arterial highways composed of those routes, segments, or corridors listed in G.S. 136-178, and any other route added by the Department of Transportation under G.S. 136-178.

(2) Transportation Improvement Program. The schedule of major transportation improvement projects required by G.S. 143B-350(f)(4).

(3) Trust Fund. The North Carolina Highway Trust Fund. (1989, c. 692, s. 1.1; 2004-124, s. 30.21(a).)

Editor's Note. —

Session Laws 2003-284, ss. 29.12(a) through (m), as amended by 2004-161, s. 21.1, provide for the establishment of a Highway Trust Fund Study Committee. The Committee may study all aspects of the Highway Trust Fund, may make interim reports and shall make a final report to the Joint Legislative Transportation Oversight Committee no later than January 31, 2005. Regardless of whether it has filed an interim or final report, the Committee shall terminate on January 31, 2005.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 30.21(a), effective July 1, 2004, substituted "those routes, segments, or corridors listed in G.S. 136-178, and any other route" for "those projects listed in G.S. 136-179, I-240, I-277, US-29 from I-85 to the Virginia line, and any other route" in subdivision (1).

§ 136-176. (For contingent repeal see editor's note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) Repealed by Session Laws 2001-424, s. 27.1.

(5) Interest and income earned by the Fund.

(a1) The Department shall use two hundred twenty million dollars ($220,000,000) in fiscal year 2001-2002, two hundred twelve million dollars ($212,000,000) in fiscal year 2002-2003, and two hundred fifty-five million

dollars ($255,000,000) in fiscal year 2003-2004 of the cash balance of the Highway Trust Fund for the following purposes:

(1) For primary route pavement preservation. — One hundred seventy million dollars ($170,000,000) in fiscal year 2001-2002, and one hundred fifty million dollars ($150,000,000) in each of the fiscal years 2002-2003 and 2003-2004. Up to ten percent (10%) of the amount for each of the fiscal years 2001-2002, 2002-2003, and 2003-2004 is available in that fiscal year, at the discretion of the Secretary of Transportation, for:

a. Highway improvement projects that further economic growth and development in small urban and rural areas, that are in the Transportation Improvement Program, and that are individually approved by the Board of Transportation; or

b. Highway improvements that further economic development in the State and that are individually approved by the Board of Transportation.

(2) For preliminary engineering costs not included in the current year Transportation Improvement Program. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(3) For computerized traffic signal systems and signal optimization projects. — Fifteen million dollars ($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004.

(4) For public transportation twenty million dollars ($20,000,000) in fiscal year 2001-2002, twenty-five million dollars ($25,000,000) in fiscal year 2002-2003, and seventy-five million dollars ($75,000,000) in fiscal year 2003-2004.

(5) For small urban construction projects. — Seven million dollars ($7,000,000) in fiscal year 2002-2003.

Funds authorized for use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a2) Repealed by Session Laws 2002-126, s. 26.4(b), effective July 1, 2002.

(a3) The Department may obligate three hundred million dollars ($300,000,000) in fiscal year 2003-2004 and four hundred million dollars ($400,000,000) in fiscal year 2004-2005 of the cash balance of the Highway Trust Fund for the following purposes:

(1) Six hundred thirty million dollars ($630,000,000) for highway system preservation, modernization, and maintenance, including projects to enhance safety, reduce congestion, improve traffic flow, reduce accidents, upgrade pavement widths and shoulders, extend pavement life, improve pavement smoothness, and rehabilitate or replace deficient bridges; and for economic development transportation projects recommended by local officials and approved by the Board of Transportation.

(2) Seventy million dollars ($70,000,000) for regional public transit systems, rural and urban public transportation system facilities, regional transportation and air quality initiatives, rail system track improvements and equipment, and other ferry, bicycle, and pedestrian improvements. For any project or program listed in this subdivision for which the Department receives federal funds, use of funds pursuant to this subdivision shall be limited to matching those funds.

Funds authorized for obligation and use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a4) Project selection pursuant to subsection (a3) of this section shall be based on identified and documented need. Funds expended pursuant to subdivision (1) of subsection (a3) of this section shall be distributed in

accordance with the distribution formula in G.S. 136-17.2A. No funds shall be expended pursuant to subsection (a3)(1) of this section on any project that does not meet Department of Transportation standards for road design, materials, construction, and traffic flow.

(a5) The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before September 1, 2003, on its intended use of funds pursuant to subsection (a3) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2004, on its actual current and intended future use of funds pursuant to subsection (a3) of this section. The Department shall certify to the Joint Legislative Transportation Oversight Committee each year, on or before November 1, that use of the Highway Trust Fund cash balances for the purposes listed in subsection (a3) of this section will not adversely affect the delivery schedule of any Highway Trust Fund projects. If the Department cannot certify that the full amounts authorized in subsection (a3) of this section are available, then the Department may determine the amount that can be used without adversely affecting the delivery schedule and may proportionately apply that amount to the purposes set forth in subsection (a3) of this section.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four percent (4%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section for the 2003-2004 fiscal year and three and eight-tenths percent (3.8%) thereafter, may be used each fiscal year by the Department for expenses to administer the Trust Fund. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer's average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. The sum up to the amount anticipated to be necessary to meet the State matching funds requirements to receive federal-aid highway trust funds for the next fiscal year may be set aside for that purpose. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct projects on segments or corridors of the Intrastate System as described in G.S. 136-178 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(b1) The Secretary may authorize the transfer of funds allocated under subdivisions (1) through (4) of subsection (b) of this section to other projects that are ready to be let and were to be funded from allocations to those subdivisions. The Secretary shall ensure that any funds transferred pursuant to this subsection are repaid promptly and in any event in no more than four years. The Secretary shall certify, prior to making any transfer pursuant to this subsection, that the transfer will not affect the delivery schedule of Highway Trust Fund projects in the current Transportation Improvement Program. No transfers shall be allowed that do not conform to the applicable provisions of the equity formula for distribution of funds, G.S. 136-17.2A. If the Secretary authorizes a transfer pursuant to this subsection, the Secretary shall report that decision to the next regularly scheduled meetings of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, and to the Fiscal Research Division.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the two bienniums following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27; 1995 (Reg. Sess., 1996), c. 590, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 19.4(a); 1998-212, s. 27.2; 1999-237, s. 27.1; 2000-140, s. 31; 2001-424, ss. 27.1, 27.23(d), 27.23(e), 27.23(f); 2002-126, ss. 26.4(a), 26.4(b), 26.9(b); 2002-133, s. 3; 2002-159, s. 41.5; 2003-284, ss. 29.4, 29.22; 2003-383, ss. 1, 2, 3; 2004-124, ss. 30.3(a), 30.3(b), 30.21(b).)

Editor's Note. —

For contingent repeal of subdivision (a)(4), see the editor's note under G.S. 136-175 in the main volume.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, ss. 30.3(a) and (b), and 30.21(b), effective July 1, 2004, added the last sentence in subsection (a1); added the last sentence in subsection (a3); and substituted "construct projects on segments or corridors of the Intrastate System as described in G.S. 136-178" for "construct the projects of the Intrastate System described in G.S. 136-179" in subdivision (b)(1).

§ 136-178. Purpose and description of Intrastate System.

(a) The Intrastate System is established to provide high-speed, safe travel service throughout the State. It connects major population centers both inside and outside the State and provides safe, convenient, through-travel for motorists. It is designed to support statewide growth and development objectives and to connect to major highways of adjoining states. All segments of the routes in the Intrastate System shall have at least four travel lanes except those for which projected traffic volumes and environmental considerations dictate fewer lanes. When warranted, segments of the Intrastate System shall have vertical separation or interchanges at crossings, more than

four travel lanes, or bypasses. Access to a route in the Intrastate System is determined by travel service and economic considerations.

Funds allocated from the Trust Fund for the Intrastate System are primarily intended to be used to complete the projects listed in G.S. 136-179. If Intrastate Trust Funds assigned to a distribution region through the provisions of G.S. 136-17.2A cannot be used for projects listed in G.S. 136-179, then they may be used for projects on the following route segments or corridors:

I-26 from Tennessee to South Carolina.

I-40 from Tennessee to US 17 in New Hanover County.

I-73 from South Carolina to Virginia.

I-74 fr1om South Carolina to Virginia.

I-77 from South Carolina to Virginia.

I-85 from South Carolina to Virginia.

I-95 from South Carolina to Virginia.

I-240 in Buncombe County.

I-277 in Mecklenburg County.

I-440 in Wake County.

US 1 from South Carolina to I-85 in Vance County.

US 13 from US 17 in Bertie County to Virginia.

US 17 from South Carolina to Virginia.

US 19/19E from I-26 in Madison County to NC 194 in Avery County.

US 23/441 from Georgia to US 74 in Jackson County.

US 29 from I-40 in Guilford County to Virginia.

US 52 from I-74 in Surry County to I-85 in Davidson County.

US 64 from US 52 in Davidson County to US 158 in Dare County.

US 70 from I-40 in Wake County to NC 24 in Carteret County.

US 74 from Tennessee to US 17 in Brunswick County, including Independence Boulevard from I-277 to I-485 in Mecklenburg County.

US 158 from US 52 in Forsyth County to I-85 in Granville County, and from I-85 in Warren County to US 64 in Dare County.

US 221 from South Carolina to NC 105 in Avery County.

US 264 from US 64 in Wake County to US 17 in Beaufort County.

US 321 from South Carolina to Tennessee.

US 421 from US 321 west of Boone in Watauga County to I-40 in Forsyth County, and from I-85 in Guilford County to NC 87 in Lee County.

NC 24 from I-77 in Mecklenburg County to US 70 in Carteret County.

NC 87 from US 421 in Lee County to US 74/76 in Columbus County.

NC 105 from US 221 in Avery County to US 321 in Watauga County.

NC 168 from US 158 in Currituck County to Virginia.

NC 194 from US 19E to US 221 in Avery County.

New route from US 158 to NC 12, including a new toll bridge over the Currituck Sound in Currituck County.

Interstate routes or corridors designated by Congress or officially accepted onto the Interstate System by the United States Department of Transportation.

Any portion of an urban loop project, as described in G.S. 136-180, that has been certified by the Department as complete and is no longer eligible for funding from the urban loop allocation specified in G.S. 136-176(b)(2).

The Department of Transportation may add a route to the Intrastate System if the route is a multilane route and has been designed and built to meet the construction criteria of the Intrastate System projects. No funds may be expended from the Trust Fund on routes added by the Department.

(b) Before encumbering or spending any funds on projects added to the Intrastate System by this section, in addition to those projects required to receive first priority pursuant to G.S. 136-179, the Department shall submit a report to the legislators representing the counties in which the priority projects

that have not been completed are located on the current status of the project, the projected date for completion of the project, and the reasons for the delay in completing the project. (1989, c. 692, s. 1.1; 2004-124, s. 30.21(c).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 30.21(c), effective July 1, 2004, rewrote subsection (a); added subsection (b); and inserted "and description" in the section heading.

§ 136-179. Projects of Intrastate System funded from Trust Fund.

In the allocation of funds as specified in G.S. 136-176(b)(1), first priority shall be given to the following projects on the Intrastate System:

Route	Improvements	Affected Counties
I-40	Widening	Buncombe, Haywood, Guilford, Wake, Durham
I-77	Widening	Mecklenburg
I-85	Widening	Durham, Orange, Alamance, Guilford, Cabarrus, Mecklenburg, Gaston
I-95	Widening	Halifax
US-1	Complete 4-laning from Henderson to South Carolina Line (including 6-laning of Raleigh Beltline)	Vance, Franklin, Wake, Chatham, Lee, Moore, Richmond
US-13	Complete 4-laning from Virginia Line to US-17	Gates, Hertford, Bertie
US-17	Complete 4-laning from Virginia Line to South Carolina Line (including Washington, New Bern, Hampstead from Military Cutoff Road in New Hanover County to US 17 north of Hampstead, and Jacksonville Bypasses)	Camden, Pasquotank, Perquimans, Chowan, Bertie, Martin, Beaufort, Craven, Jones, Onslow, Pender, New Hanover, Brunswick
US-19/US-19E	Complete 4-laning from US-23 to NC 194 in Ingalls	Madison, Yancey, Mitchell, Avery
US-19	Complete 4-laning	Cherokee, Macon, Swain
US-23	Complete 4-laning and upgrading existing 4-lanes from Tennessee Line to I-240	Madison, Buncombe

Route	Improvements	Affected Counties
US-23-441	Complete 4-laning from US-19/US-74 to Georgia Line	Macon
US-52	Complete 4-laning from I-77 to Lexington (including new I-77 Connector)	Surry, Davidson
US-64	Complete 4-laning from Raleigh to Coast (including freeway construction from I-95 to US-17)	Edgecombe, Pitt, Martin, Washington, Tyrrell, Dare
US-64	Complete 4-laning from Lexington to Raleigh	Davidson, Randolph, Chatham, Wake
US-70	Complete 4-laning from Raleigh to Morehead City (including Clayton, Goldsboro, Kinston, Smithfield-Selma, and Havelock Bypasses predominately freeways on predominately new locations)	Wake, Johnston, Wayne, Lenoir, Craven
US-74	Complete 4-laning from Charlotte to US-17 (including multilaning of Independence Blvd. in Charlotte, and Bypasses of Monroe, Rockingham, and Hamlet)	Mecklenburg, Union, Richmond, Robeson, Columbus
US-74	Complete 4-laning from I-26 to I-85 (including Shelby Bypass)	Polk, Rutherford, Cleveland
US-158	Complete 4-laning from Winston-Salem to Whalebone	Forsyth, Guilford, Rockingham, Caswell, Person, Granville, Vance, Warren, Halifax, Northampton, Gates, Hertford, Pasquotank, Camden, Currituck, Dare
	New toll bridge over Currituck Sound	Currituck
US-221	Complete 4-laning from Linville to South Carolina	Avery, McDowell, Rutherford
US-220	Complete 4-laning from I-40 to US-1	Guilford, Randolph, Montgomery, Richmond
US-220/NC-68	Complete 4-laning from Virginia Line to I-40	Rockingham, Guilford

Route	Improvements	Affected Counties
US-264	Complete 4-laning from US-64 to Washington (including Wilson and Greenville Bypasses) (including freeway construction from I-95 to Greenville)	Wilson, Greene, Pitt
US-321	Complete 4-laning from Tennessee Line to South Carolina Line	Avery, Caldwell, Catawba, Lincoln, Gaston, Watauga
US-421	Complete 4-laning from US 321 west of Boone to I-40	Watauga, Wilkes, Yadkin
US-421	Complete 4-laning from Greensboro to Sanford (including Bypass of Sanford)	Chatham, Lee
NC-24	Complete 4-laning from Charlotte to Morehead City	Mecklenburg, Cabarrus, Stanly, Montgomery, Moore, Harnett, Cumberland, Sampson, Duplin, Onslow, Carteret
NC-87	Complete 4-laning from Sanford to US-74	Lee, Harnett, Cumberland, Bladen, Columbus
NC-105	Complete 4-laning from Boone to Linville	Watauga, Avery
NC-168	Complete multilaning from Virginia Line to US-158	Currituck
NC-194	Complete 4-laning from US-19E to US-221	Avery

(1989, c. 692, s. 1.1; 2003-284, s. 29.11(b); 2004-124, s. 30.21(d); 2004-184, s. 4.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 30.21(d), effective July 1, 2004, rewrote the introductory language; in the second instance of "US-74," inserted "(including Shelby Bypass)" under the heading "Improvements" and "Cleveland" under the heading "Affected Counties"; in the entry for "US-158," substituted "new toll bridge" for "new bridge" under the heading "Improvements"; in the entry for "US-321," substituted "Tennessee Line" for "Boone" under the heading "Improvements" and inserted "Avery" and "Watauga" under the heading "Affected Counties"; and in the first instance of "US-421," substituted "US 321 west of Boone" for "Tennessee Line."

Session Laws 2004-184, s. 4, effective August 12, 2004, added "Hampstead from Military Cutoff Road in New Hanover County to US 17 north of Hampstead" under the Improvements column pertaining to Route US-17.

§ 136-180. (For contingent repeal see editor's note) Urban loops.

(a) Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
Asheville Western Loop	Multilane facility on new location from I-26 west of Asheville to US-19/23 north of Asheville for the purpose of connecting these roads. The funds may be used to improve existing corridors.	Buncombe
Charlotte Outer Loop	Multilane facility encircling City of Charlotte including 6-laning of the portion from Johnston Road/US 521 south to I-77 south of Charlotte-including widening, resurface, and interchange	Mecklenburg
Durham Northern Loop	The projects listed below are eligible for funding under this section as part of the Durham Northern Loop. The priorities for planning and constructing these projects will be established by mutual agreement of the Metropolitan Planning Organization (MPO) and the Department of Transportation through the federally mandated	

Loop	Description	Affected Counties
	Transportation Improvement Program development process. The cross sections for these projects will be established by mutual agreement of the MPO and the Department of Transportation through the State and federal environmental review process. (1) East end connector, from N.C. 147 to U.S. 70 East. (2) U.S. 70, from Lynn Rd. to the Northern Durham Parkway. (3) I-85, from U.S. 70 to Red Mill Rd. (4) Northern Durham Parkway, Section B, from Old Oxford Rd. to I-85. (5) Northern Durham Parkway, Section A, from I-85 to I-540. (6) Northern Durham Parkway, Section C, from Old Oxford Rd. to Roxboro Rd. (7) Roxboro Rd. from Duke St. to Goodwin Rd.	Durham, Wake
Fayetteville Western Outer Loop	Multilane facility on new location from US 401 north of Fayetteville to I-95 south of Hope Mills	Cumberland
Gastonia Loop	Multilane facility, known as the Garden Parkway, on a new location beginning at I-485, extending west across southern Gaston County to I-85, and continuing north to US 321	Gaston, Mecklenburg

Loop	Description	Affected Counties
Greensboro Loop	Multilane facility on new location encircling City of Greensboro including interchanges with Cone Boulevard Extension and Lewiston-Fleming Road Extension	Guilford
Greenville Loop	Multilane extension of the Greenville Loop from US 264 west of Greenville to NC-11 south of Winterville	Pitt
Raleigh Outer Loop	Multilane facility on new location encircling City of Raleigh	Wake, Durham, Johnston
Wilmington Bypass	Multilane facility on new location from US-17 northeast of Wilmington to US 421 in southern Wilmington, continuing from US 421 in southern Wilmington northeast along Independence Blvd., and extending to Martin Luther King, Jr. Parkway, and including the Blue Clay Road interchange	New Hanover
Winston-Salem Northbelt	Multilane facility on new location from I-40 west of Winston-Salem northerly to US 311/ Future I-74 in eastern Forsyth County	Forsyth

(b) The Board of Transportation may, by official resolution, accept a new interstate or freeway as the revised termini of an urban loop described in subsection (a) of this section, and the revised project shall be eligible for funding with funds described in G.S. 136-176(b)(2) if the following conditions are met:

(1) The Department of Transportation has constructed a new interstate or freeway facility since 1989 and has changed the official route designation from the termini described in subsection (a) of this section to the new facility.

(2) The Board of Transportation finds that the purposes of the urban loop facility, specifically including reduced congestion and high-speed, safe, regional through-travel service, would be enhanced by the action.

(1989, c. 692, s. 1.1; 2002-126, s. 26.10(a); 2003-284, s. 29.11(a); 2004-124, s. 30.19; 2004-148, s. 4.)

Editor's Note. —
Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —
Session Laws 2004-124, s. 30.19, effective July 1, 2004, rewrote subsection (a).

Session Laws 2004-148, s. 4, effective August 2, 2004, substituted "Lewiston-Fleming" for "Lewis-Fleming" in the description of the Greensboro Loop in subsection (a).

§ 136-182. Supplement for secondary road construction.

Funds are allocated from the Trust Fund to increase allocations for secondary road construction made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day can be paved by the 2009-2010 fiscal year. If all the State-maintained roads in a county have been paved under G.S. 136-44.7, except those that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, then the funds may be used for safety improvements on the paved or unpaved secondary roads in that county. (1989, c. 692, s. 1.1; 2003-112, s. 2; 2004-124, s. 30.21(e).)

Editor's Note. —
Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —
Session Laws 2004-124, s. 30.21(e), effective July 1, 2004, deleted the former second and fourth sentences.

§ 136-185. Maintenance reserve created in certain circumstances.

If the Highway Trust Fund has not terminated but all contracts for the projects of the Intrastate System described in G.S. 136-179 have been let and the amount collected and allocated for the Intrastate System is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for projects of the Intrastate System, all subsequent allocations of revenue for the Intrastate System shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the projects of the Intrastate System.

If the Highway Trust Fund has not terminated but all contracts for the urban loops described in G.S. 136-180 have been let and the amount collected and allocated for the urban loops is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for the urban loops, then all urban loops shall be considered a part of the Intrastate System, and all subsequent allocations of revenue for the urban loops shall be credited to the Intrastate account within the Trust Fund. (1995 (Reg. Sess., 1996), c. 590, s. 16; 2004-124, s. 30.21(f).)

Editor's Note. —
Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 30.21(f), effective July 1, 2004, in the second paragraph, inserted "urban loops shall be considered a part of the Intrastate System, and all" and substituted "the Intrastate account" for "a reserve account" in the first sentence, and deleted the former last sentence.

Article 15.

Railroads.

§ 136-194. Cattle guards and private crossings; failure to erect and maintain misdemeanor.

CASE NOTES

Applicability to Completely Enclosed Land and Actions Involving Cattle Guards or Crossings. —

Where a landowner took property with record notice that no road or crossing existed to connect and provide access between the divided portions of the property, summary judgment was properly granted to a railroad company in the landowner's action to compel the construction of a grade crossing between the landowner's two tracts of land because the company was not required to provide the landowner with access under G.S. 136-194 where the property was not fenced or enclosed. Section 136-194 applies only to completely enclosed land and contemplates that the statute can be utilized only for actions involving cattle guards or crossings. Summerlin v. Norfolk S. Ry. Co., 161 N.C. App. 170, 588 S.E.2d 30, 2003 N.C. App. LEXIS 2000 (2003).

Cited in Gilliam v. McKnight, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 23865 (M.D.N.C. Dec. 4, 2002).

Article 16.

Planning.

§ 136-202. Metropolitan planning organizations.

(a) Each Metropolitan Planning Organization shall base all transportation plans, metropolitan transportation improvement programs, and conformity determinations on the most recently completed regional travel demand model.

(b) Each Metropolitan Planning Organization shall update its transportation plans in accordance with the scheduling requirements stated in 23 Code of Federal Regulations 450.322 (1 April 1999 Edition).

(c) The Department, the metropolitan planning organizations, and the Department of Environment and Natural Resources shall jointly evaluate and adjust the regions defined in each regional travel demand model at least once every five years and no later than October 1 of the year following each decennial federal census. The evaluation and adjustment shall be based on decennial census data and the most recent populations estimates certified by the State Budget Officer. The adjustment of these boundaries shall reflect current and projected patterns of population, employment, travel, congestion, commuting, and public transportation use and the effects of these patterns on air quality.

(d) The Department shall report on the evaluation and adjustment of the boundaries of the area served by each Metropolitan Planning Organization to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission no later than November 1 of each year in which the regions are evaluated and adjusted. (1999-328, s. 4.10; 2004-203, s. 5(k).)

Effect of Amendments. — Session Laws 2004-203, s. 5(k), effective August 17, 2004, substituted "Budget Officer" for "Planning Officer" in subsection (c).

Article 18.

Virginia-North Carolina Interstate High-Speed Rail Compact.

§ 136-220. Compact established.

Pursuant to the invitation in 49 U.S.C. § 24101 (Interstate Compacts), in which the United States Congress grants consent to states with an interest in a specific form, route, or corridor of intercity passenger rail service (including high-speed rail service) to enter into interstate compacts, there is hereby established the Virginia-North Carolina Interstate High-Speed Rail Compact. (2004-114, s. 1.)

Editor's Note. — Session Laws 2004-114, s. 2, made this Article effective July 17, 2004.

§ 136-221. Agreement.

The Commonwealth of Virginia and the State of North Carolina agree, upon adoption of this compact:

(1) To study, develop, and promote a plan for the design, construction, financing, and operation of interstate high-speed rail service through and between points in the Commonwealth of Virginia and the State of North Carolina, and adjacent states.

(2) To coordinate efforts to establish high-speed rail service at the federal, State, and local governmental levels.

(3) To advocate for federal funding to support the establishment of high-speed interstate rail service within and through Virginia and North Carolina and to receive federal funds made available for rail development.

(4) To provide funding and resources to the Virginia-North Carolina High-Speed Rail Compact Commission from funds that are or may become available and are appropriated for that purpose. (2004-114, s. 1.)

§ 136-222. Commission established; appointment and terms of members; chairman; reports; commission funds; staff.

(a) Commission established. — The Virginia- North Carolina High-Speed Rail Compact Commission is hereby established as a regional instrumentality and a common agency of each signatory party, empowered in a manner hereinafter to carry out the purposes of the Compact.

(b) Members, terms. — The Virginia members of the Commission shall be appointed as follows: three members of the House of Delegates, appointed by the Speaker of the House of Delegates, and two members of the Senate, appointed by the Senate Committee on Rules. The North Carolina members of the Commission shall be composed of five members as follows: two members of the Senate appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, two members of the House of Representatives appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one appointed by the Governor.

(c) Chair. — The chair of the Commission shall be chosen by the members of the Commission from among its membership for a term of one year and shall alternate between the member states.

(d) Meetings and reports. — The Commission shall meet at least twice each year, at least once in Virginia and once in North Carolina, and shall issue a report of its activities each year.

(e) Funds. — The Commission may utilize, for its operation and expenses, funds appropriated to it therefore by the legislatures of Virginia and North Carolina, or received from federal sources.

(f) Expenses of Members. — Virginia members of the Commission shall receive compensation and reimbursement for expenses in accordance with the applicable laws of that state. North Carolina members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-31, 138-5, or 138-6, as appropriate.

(g) Staff. — Primary staff to the Commission shall be provided by the Virginia Department of Rail and Public Transportation and the North Carolina Department of Transportation. (2004-114, s. 1.)

Chapter 142.

State Debt.

Article 1.

General Provisions.

Sec.
142-15.3. Capital appreciation bonds.

Article 9.

State Capital Facilities Finance Act.

142-95. RECOP indebtedness.
142-96 through 142-99. [Reserved.]

Article 10.

Managing Debt Capacity.

Sec.
142-100. Purpose.
142-101. Debt Affordability Advisory Committee.
142-102 through 142-106. [Reserved.]

Article 1.

General Provisions.

§ 142-15.3. Capital appreciation bonds.

(a) Cross-Reference. — The provisions of G.S. 159-99 govern capital appreciation bonds.

(b) Authorization. — The State is authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act. The State is authorized to issue capital appreciation bonds pursuant to the provisions of applicable law and pursuant to the provisions of any law enacted in the future. (1987-650, ss. 2, 4 and 5; 2004-170, s. 41(a), (b).)

Editor's Note. — Session Laws 2004-170, s. 41(a), codified Session Laws 1987-650, ss. 2, 4, and 5 as G.S. 142-15.3, effective August 2, 2004.

Effect of Amendments. — Session Laws 2004-170, s. 41(b), effective August 2, 2004, rewrote the section.

Article 9.

State Capital Facilities Finance Act.

§ 142-80. Short title.

Editor's Note. —

Session Laws 2004-203, s. 79, amended the lead-in language to Session Laws 2003-314, which enacted this Article, as amended by Session Laws 2003-284, s. 46.2.

§ 142-83. Authorization of special indebtedness; General Assembly approval.

Editor's Note. —

Session Laws 2004-179, ss. 1, 1.1 and 1.2, provides: "This part may be cited as the State Capital Facilities Act of 2004.

"In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in

order top rovide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate Maximum	Maximum before 7/1/05	Project
$180,000,000	$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for a Center of Excellence of Teaching and Nursing at Fayetteville State University.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for facilities for development of the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for an Optometry School facility at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, and engineering, architectural, and other consulting services for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
10,000,000	10,000,000	Property acquisition in Piedmont-Triad Research Park for Winston-Salem State University programming related tobiotechnology education and research; and land acquisition, site preparation, and engineering, architectural, and other consulting services for a Center for Design Innovation to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.
TOTAL:		
$388,000,000	$265,000,000	

"In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of thirty-five million dollars ($35,000,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delin-

quency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

Session Laws 2004-179, s. 8.3, contains a severability clause.

§ 142-95. RECOP indebtedness.

(a) Authorization. — In addition to special indebtedness described in the preceding sections of this Article, the State may incur special indebtedness as described in this section to be called real estate certificates of participation (RECOP) indebtedness. RECOP indebtedness shall be incurred for the purposes and otherwise as prescribed in the preceding sections of this Article, with the exceptions and limitations provided in this section. All of the provisions of this Article apply to RECOP indebtedness except to the extent a provision of this section specifically conflicts with a provision in the preceding sections of this Article.

(b) Purposes. — In addition to the purposes provided in G.S. 142-83, RECOP indebtedness may be incurred to refund any indebtedness of the State. RECOP indebtedness may refund non-RECOP indebtedness to the same extent it may refund RECOP indebtedness in accordance with the preceding sections of this Article, except that the General Assembly must first enact legislation authorizing the incurrence of RECOP indebtedness for this purpose up to a specific maximum amount. The proceeds of RECOP indebtedness may not be used for operating expenses, start-up costs, or other items of working capital.

(c) Security. — In addition to the security authorized in G.S. 142-85(a), RECOP indebtedness may be secured by any property or interest in property of the State selected by the Director of the Budget in consultation with the State Treasurer and approved by the Council of State in accordance with this Article. Before selecting as security any property or interest in property not authorized in G.S. 142-85, the Director of the Budget must consult with the Joint Legislative Commission on Governmental Operations. This subsection supplements G.S. 142-85(a); all of the remaining provisions of G.S. 142-85 apply to RECOP indebtedness.

(d) Principal. — The entire principal amount may mature on a single date. No principal reduction is required prior to maturity.

(e) Interest. — Interest on RECOP indebtedness may be payable partly periodically and partly at maturity or earlier redemption, in the latter case with interest accreting and compounding at a stated interest rate.

(f) Additional State Property Law Exception. — Chapter 146 of the General Statutes does not apply to any sale of the State's interest in property securing RECOP indebtedness if the sales proceeds are used first to pay, or provide for the payment of, all or a portion of that RECOP indebtedness. The property law exceptions in G.S. 142-85(h) also apply to RECOP indebtedness. (2004-179, s. 7.1.)

Editor's Note. — Session Laws 2004-179, s. 8.3, contains a severability clause.

Session Laws 2004-179, s. 8.4, made this section effective August 5, 2004.

§§ 142-96 through 142-99: Reserved for future codification purposes.

Article 10.

Managing Debt Capacity.

§ 142-100. Purpose.

The purpose of this Article is to provide tools for sound debt management by providing an annual debt affordability study to establish guidelines for maintaining prudent debt levels and by establishing a system for prioritizing State capital needs when the needs exceed the State's capacity for new debt. (2004-179, s. 5.1.)

Editor's Note. — Session Laws 2004-179, s. 5.2, provides: "From funds appropriated to the Department of State Treasurer for the 2004-2005 fiscal year, the State Treasurer shall allocate the amounts necessary to implement the provisions of this part."

Session Laws 2004-179, s. 8.3, contains a severability clause.

Session Laws 2004-179, s. 8.4, made this Article effective August 5, 2004.

§ 142-101. Debt Affordability Advisory Committee.

(a) Membership. — The Debt Affordability Advisory Committee is created in the Department of State Treasurer. The Committee shall consist of five ex officio members or their designees and four appointed members, as follows:

(1) The State Treasurer.
(2) The Secretary of Revenue.
(3) The State Budget Officer.
(4) The State Auditor.
(5) The State Controller.
(6) Two members of the public appointed by the President Pro Tempore of the Senate.
(7) Two members of the public appointed by the Speaker of the House of Representatives.

(b) Officers and Staff. — The State Treasurer shall serve as the chair of the Committee. The Committee shall meet at the call of the chair. The Department of State Treasurer shall provide space for the Committee to meet. The Department shall also provide the Committee with necessary staff and supplies to enable it to carry out its duties in an effective manner.

(c) Compensation. — Members of the Committee shall serve without pay but shall receive per diem and allowances provided by G.S. 138-5 and G.S. 138-6.

(d) Duties. — The Debt Affordability Advisory Committee shall annually advise the Governor and the General Assembly on the estimated debt capacity of the State for the upcoming 10 fiscal years. The Committee shall oversee the undertaking of an annual debt affordability study and the establishment of guidelines for evaluating the State's debt burden. The guidelines should include target and ceiling ratios of net tax-supported debt to personal income and debt service to revenues, target and floor percentages for the 10-year payout ratio, and target and floor percentages for the unreserved General Fund balance. The Committee shall also recommend any other debt management policies it considers desirable and consistent with sound management of the State's debt.

(e) Reports. — The Committee shall report its findings and recommendations to the Governor, the President Pro Tempore of the Senate, the Speaker of

the House of Representatives, and the Fiscal Research Division by February 1 of each year. (2004-179, s. 5.1.)

Editor's Note. — Session Laws 2004-179, s. 1, provides: "This part may be cited as the State Capital Facilities Act of 2004."

Session Laws 2004-179, s. 8.3, contains a severability clause.

§§ 142-102 through 142-106: Reserved for future codification purposes.

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

Sec.

143-6. Information from departments and agencies asking State aid.
143-6.1. (Repealed effective July 1, 2005 — See editor's note) Report on use of State funds by non-State entities.
143-6.2. Use of State funds by non-State entities.
143-10. Preparation of budget and public hearing.
143-15.3E. JDIG Reserve Fund.
143-34.1. Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.

Article 3.

Purchases and Contracts.

143-48.3. Electronic procurement.
143-52.1. Board of Awards.
143-57.1. Furniture requirements contracts.
143-59.1A. Preference given to products made in United States.
143-64. Beverages contracts.

Article 3A.

Surplus Property.

Part 3. Public Agencies.

143-64.6. [Repealed.]

Article 8.

Public Contracts.

143-129.8. Purchase of information technology goods and services.

Article 9.

Building Code Council and Building Code.

143-138. North Carolina State Building Code.
143-143.5. (Expires December 1, 2005 — See editor's note) Access to toilets in shopping malls.
143-143.6 through 143-143.7. [Reserved.]

Article 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

Sec.

143-166.2. Definitions.

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

143-214.6. [Repealed.]
143-214.7. Stormwater runoff rules and programs.
143-214.11. Wetlands Restoration Program: compensatory mitigation.
143-214.12. Wetlands Restoration Program: Wetlands Restoration Fund.
143-214.25. Expired.
143-215.1. Control of sources of water pollution; permits required.
143-215.1B. Extension of date for compliance with nitrogen and phosphorus discharge limits.
143-215.6A. Enforcement procedures: civil penalties.
143-215.8C. Neuse River Modeling and Monitoring Project reports.
143-215.8D. North Carolina Water Quality Workgroup; Rivernet.

Part 1A. Animal Waste Management Systems.

143-215.10B. Definitions.
143-215.10C. Applications and permits.
143-215.10G. Fees for animal waste management systems.

Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers.

143-215.22J. [Repealed.]
143-215.22K. [Repealed.]

Part 9. Nonpoint Source Pollution Control Program.

143-215.74. Agriculture cost share program.

Article 21A.

Oil Pollution and Hazardous Substances Control.

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

143-215.94E. Rights and obligations of the owner or operator.

Article 21B.

Air Pollution Control.

Sec.
143-215.107A. Motor vehicle emissions testing and maintenance program.
143-215.107C. State agency goals, plans, duties, and reports.

Article 25B.

State Nature and Historic Preserve Dedication Act.

143-260.10. Components of State Nature and Historic Preserve.

Article 38.

Water Resources.

143-355.1. Drought Management Advisory Council; drought advisories.

Article 68.

Regulation of Boxing.

143-650. [Repealed.]
143-651. Definitions.
143-652. [Repealed.]
143-652.1. Regulation of Boxing.
143-654. Licensing and permitting.
143-655. Fees; State Boxing Commission Revenue Account.
143-656. Contracts and financial arrangements.

Article 69.

Criminal Justice Information Network Governing Board.

Sec.
143-661. Criminal Justice Information Network Governing Board — creation; purpose; membership; conflicts of interest.
143-663. Powers and duties.

Article 75.

Tobacco Trust Fund.

143-719. Tobacco Trust Fund; creation; investment; priority use.
143-722. Reporting.

Article 76.

North Carolina Geographic Information Coordinating Council.

143-725. Council established; role of the Center for Geographic Information and Analysis.

Article 78.

Commission on State Property.

143-735. Commission established; purpose; membership.
143-736. Duties of the Commission.
143-737. Brokerage fees.

Article 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

Editor's Note. — Session Laws 1983, c. 761, s. 257; Session Laws 1983 (Reg. Sess., 1984), c. 971, s. 5 and c. 1034, s. 252; Session Laws 1985, c. 479, s. 228; Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 238 and c. 1018, s. 18; Session Laws 1987, c. 738, s. 235 and c. 830, s. 119; Session Laws 1987 (Reg. Sess., 1988), c. 886, s. 4, c. 1086, s. 166, c. 1100, s. 41 and c. 1101, s. 15; 1989, c. 500, s. 125 and c. 752, s. 163; 1989 (Reg. Sess., 1990), c. 1066, s. 147 and c. 1074, s. 39; Session Laws 1991, c. 689, s. 350; Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 177; Session Laws 1993, c. 321, s. 319; Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43; Session Laws 1994, Extra Session, c. 24, s. 69; Session Laws 1995, c. 324, s. 28.1; Session Laws 1998-212, s. 30; Session Laws 1999-237, s. 30; Session Laws 2000-67, s. 28; Session Laws 2001-424, s. 36.1; Session Laws 2002-126, s. 31.1; and Session Laws 2003-284, s. 49.1; and Session Laws 2004-124, s. 33.1, provide that the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in the act by reference.

Session Laws 2003-284, ss. 6.12(a)-(c), as amended by Session Laws 2004-161, s. 47.1, provides: "(a) There is created a Joint Committee on Executive Budget Act Revisions. The Committee shall be composed of 8 members, four of whom shall be Representatives who are members of the Appropriations Committee appointed by the Speaker of the House of Representatives and four of whom shall be Senators who are members of the Appropriations Committee appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall designate one member as cochair and the President Pro Tempore of the Senate shall designate one member as cochair.

The Committee shall meet upon call of the cochairs.

"(b) The Committee shall consider contemporary financial management practices in reviewing the current budget process. The Committee shall recommend any changes to the Executive Budget Act that are needed to modernize and improve the processes of budget preparation, budget adoption, budget execution, and program evaluation. The Committee shall report its recommendations to the 2005 General Assembly on or before its convening.

"(c) The Legislative Services Office shall assign professional and clerical staff to assist the Committee in its work. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

CASE NOTES

No Private Right of Action. — In an action by a former employee against his former employer and former supervisors alleging discrimination, retaliation, and hostile work environment under 42 U.S.C.S. § 1981a, Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C.S. § 2000e et seq., the Age Discrimination in Employment Act (ADEA), 29 U.S.C.S. § 621 et seq., the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and state law, summary judgment was granted for the employer and supervisors under Fed. R. Civ. P. 56(c) where the supervisors were not subject to personal liability under 42 U.S.C.S. § 2000e-5(f)(1); they were not named in the employee's Equal Employment Opportunity charge, the employee failed to establish a prima facie case of discrimination under Title VII or the ADEA, the employee failed to offer sufficient proof to overcome the legitimate, non-discriminatory explanation that he was terminated for continued misconduct, the employee's retaliation claim failed because he failed to show that the legitimate, non-discriminatory reasons for his termination were a pretext for retaliation, the employee's hostile work environment claim failed because he failed to allege any objectively severe or pervasive race-, sex-, or age-based activity, the employee failed to establish a prima facie case of disability discrimination under 42 U.S.C.S. § 12112 because he failed to show that he had a disability under 42 U.S.C.S. § 12102(2) during his employment, and the employee had no private right of action under the North Carolina Equal Employment Practices Act, G.S. 143-1 et seq. Monroe v. BellSouth Telecomms., Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 14946 (M.D.N.C. Aug. 15, 2003).

§ 143-6. Information from departments and agencies asking State aid.

(a) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

(b) Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then review the statement of needs submitted by the requesting department, bureau, division, officer, board, commission, institu-

tion, or other State agency or undertaking and perform additional analysis, as necessary, to comply with G.S. 143-341.

(b1) All requests for financial aid for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall be accompanied by a certification from the Department of Administration as outlined in G.S. 143-341. The General Assembly may provide advanced planning funds but shall only provide construction funds when the requirements of this subsection have been met. This subsection shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

(b2) Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of acquiring or maintaining information technology as defined by G.S. 147-33.81(2) shall, before making the request for State financial aid, submit to the State Chief Information Officer (State CIO) a statement of its needs in terms of information technology and other related requirements and shall furnish the State CIO with any additional information requested by the State CIO. The CIO shall then review the statement of needs and perform additional analysis, as necessary, to comply with Article 3D of Chapter 147 of the General Statutes. All requests for financial aid for the purpose of acquiring or maintaining information technology shall be accompanied by a certification from the State CIO deeming the request for financial aid to be consistent with Article 3D of Chapter 147 of the General Statutes. The State CIO shall make recommendations to the Governor regarding the merits of requests for financial aid for the purpose of acquiring or maintaining information technology. This subsection shall not apply to requests for appropriations of less than one hundred thousand dollars ($100,000).

(c) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies receiving or asking financial aid or support from the State, under the authority of any general law of the State, shall furnish the Director with the following information:

(1) The amount of State funds disbursed in the immediately preceding two fiscal years and the purpose for which the funds were disbursed and used, the amount being requested as continuation funds for the upcoming fiscal year, and the justification for continued State support; and

(2) Justification for continued State support shall include information on the extent of the public benefit being derived from State support.

(d) The Office of State Budget and Management and the Director of the Budget shall provide to the General Assembly, on or before January 15 of each odd-numbered year, a report that adequately and fairly presents the information required in this section. (1925, c. 89, s. 6; 1929, c. 100, s. 6; 1957, c. 584, s. 4; 1965, c. 310, s. 4; 1991, c. 689, s. 190(b); 1998-45, s. 2; 2000-140, s. 93.1(a); 2001-424, ss. 12.2(b), 15.3(a); 2004-129, s. 39.)

Effect of Amendments. — Session Laws 2004-129, s. 39, effective July 1, 2004, in subsection (b2), inserted "State" preceding "CIO" throughout, deleted "submitted by the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking" preceding "and perform additional analysis," and substituted "Article 3D of Chapter 147 of the General Statutes" for "G.S. 147-33.82."

§ 143-6.1. (Repealed effective July 1, 2005 — See editor's note) Report on use of State funds by non-State entities.

(a) Disbursement and Use of State Funds. — Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly or collected by the State. For purposes of this section, the term 'non-State entity' means a firm, organization, corporation, partnership, association, institution, unit of local government, or any other organization that is not a State agency, department, or institution. State funds include federal funds that flow through the State. For the purposes of this section, the term 'grantee' means a non-State entity other than a unit of local government that receives a grant of State funds from a State agency, department, or institution.

The State shall not disburse State funds appropriated by the General Assembly to any grantee or collected by the State for use by any grantee unless that grantee:

(1) Provides all reports and financial information required under this section to the appropriate State agencies and officials; and

(2) Provides any additional information that the Office of State Budget and Management deems necessary demonstrating that such grantee is capable of managing the funds in accordance with law and has established adequate financial procedures and controls.

All financial statements furnished to the State Auditor pursuant to this section, and any audits or other reports prepared by the State Auditor, are public records.

(a1) Compliance by Non-State Entities. — If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, the Director shall take appropriate administrative action to ensure that no further irregularities occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds.

(b) State Agency Responsibilities. — A State agency that receives State funds and then disburses the State funds to a grantee shall:

(1) Submit documents to the State Auditor in a prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors performing audits.

(2) Annually, at the time the grant is made, notify each grantee, in writing, of the reporting requirements set forth in this section and that the State agency is not authorized to disburse funds to grantees that fail to comply with the reporting requirements for funds received during the prior fiscal year.

(3) Provide each grantee with the accounting form and other requirements prescribed by the State Auditor.

(4) Submit a list to the State Auditor by October 31 each year of every grantee to which the agency disbursed State funds in the prior fiscal year, the amount disbursed to each grantee, the funding source of each grant, and other such information as required by the State Auditor to comply with the requirements set forth in this section.

(5) Submit a list to the Office of State Budget and Management by January 31 each year of every grantee to which the agency disbursed State funds in the prior fiscal year and, for each grantee, whether that grantee has filed the sworn accounting required by subsection (c) of this section and whether the sworn accounting is in compliance with subsection (c) of this section.

(6) Ensure funds are spent in accordance with the purposes for which they were granted and hold the grantees accountable for the legal and appropriate expenditure of State grant funds.

(7) Provide for adequate oversight and monitoring to prevent the misuse of State funds.

(b1) Grantee Responsibilities. — A grantee that receives a grant of State funds shall:

(1) Ensure funds are spent in accordance with the purposes for which they were granted and be accountable for the legal and appropriate expenditure of State grant funds.

(2) Maintain reports, records, and other information to properly account for the expenditure of all State grant funds received by the grantee and to make the reports, records, and other information available to the grantor State agency or the State Auditor for oversight, monitoring, and evaluation purposes.

(3) Hold any non-State entity to which the grantee provides a grant of State funds accountable for the legal and appropriate expenditure of State grant funds.

(4) Adhere to the reporting requirements mandated by this section.

(c) Grantee Receipt and Expenditure Reports. — A grantee that receives, uses, or expends between fifteen thousand dollars ($15,000) and three hundred thousand dollars ($300,000) in State funds annually must file annually with the State Auditor and the State agency that disbursed the funds a sworn accounting of receipts and expenditures of the State funds and a description of activities and accomplishments undertaken by the grantee with State funds. This accounting must be attested to by the treasurer of the grantee and one other authorizing officer of the grantee. The accounting must be filed within six months after the end of the grantee's fiscal year in which the State funds were received. The accounting and the description of activities and accomplishments shall be in the formats, including electronic filings, required by the State Auditor and provided to the grantee by the disbursing agency.

(d) Grantee Audit Reports. — A grantee that receives, uses, or expends State funds in the amount of three hundred thousand dollars ($300,000) or more annually must file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. These audit reports shall be filed no later than nine months after the close of the grantee's fiscal year. The financial statement must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

A grantee that receives, uses, or expends State funds in theamount of three hundred thousand dollars ($300,000) or moreannually must file annually with the State Auditor and the State agency that disbursed the funds a description of activities and accomplishments undertaken by the grantee with State funds. This description must be filed within 90 days after the end of the grantee's fiscal year in which the State funds were received. The description of activities and accomplishments shall be in a format, including electronic filings, required by the State Auditor.

(d1) State Auditor's Responsibilities. — The State Auditor shall:

(1) Review each audit submitted pursuant to subsection (d) of this section and determine that it has been conducted in accordance with generally accepted audit standards and that the grantee has received a clean audit opinion.

(2) Notify disbursing agencies by January 31 each year of all grantees that are not in compliance with the reporting requirements set forth in this section.

(3) Notify disbursing agencies of any material audit findings in the audits of their grantees.

(4) Submit a list to the Office of State Budget and Management by January 31 each year of every grantee that received State funds in the prior fiscal year and, for each grantee, whether that grantee has complied with this subsection.

(d2) Before a State agency disburses any funds for the fourth quarter of a fiscal year, the agency shall, in consultation with the Office of State Budget and Management, verify that the grantee has complied with the reporting requirements of this section. A State agency shall not disburse funds during the fourth quarter of the fiscal year to any grantee that has not complied with this section by March 31 of each year.

(d3) The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by May 1 of each year on all grantees that failed to comply with this section for the prior fiscal year, the amount of State funds that were disbursed to each of those grantees during that fiscal year, and the amount of State funds that were withheld.

(e) Federal Reporting Requirements. — Federal law may require a grantee to make additional reports with respect to funds for which reports are required under this section. Notwithstanding the provisions of this section, a grantee may satisfy the reporting requirements of subsection (c) of this section by submitting a copy of the report required under federal law with respect to the same funds or by submitting a copy of the report described in subsection (d) of this section.

(f) Audit Oversight. — The State Auditor has audit oversight, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee that receives, uses, or expends State funds. Such a grantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of State funds. The grantee must furnish any additional financial or budgetary information requested by the State Auditor. Grantees shall ensure that work papers in the possession of their auditors are available to the State Auditor and provide the work papers upon request. Audit work papers furnished by an auditor of a grantee are not public records and are exempt from G.S. 132-1. (1989, c. 752, s. 54; 1991, c. 689, ss. 12, 190(a); 1993, c. 321, s. 45; 1995 (Reg. Sess., 1996), c. 748, s. 2.1; 1997-443, s. 34.11; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-284, s. 6.21; 2004-123, 6.24.)

Editor's Note. — Session Laws 2004-196, s. 1, provides that G.S. 143-6.1 is repealed effective July 1, 2005.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 6.24, effective July 1, 2005, rewrote the section.

§ 143-6.2. Use of State funds by non-State entities.

(a) **(Effective July 1, 2005)** Disbursement and Use of State Funds. — Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State. For the purposes of this section, the term "non-State entity" means a firm, corporation, partnership, association, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution. For the purposes of this section, unit of local government" has the meaning set out in G.S. 159-7(15) and "public authority" has the meaning set out in G.S. 159-7(10).

(b) **(Effective July 1, 2005)** For the purposes of this section, the term "grantee" means a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. The term "subgrantee" means a non-State entity that receives a grant of State funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. The terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.

(c) **(Effective July 1, 2005)** Compliance by Non-State Entities. — If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, the Director shall take appropriate administrative action to ensure that no further irregularities occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds.

(d) The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The rules shall establish policies and procedures for disbursements of grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. Such policies and procedures shall:

(1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.

(2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.

(3) Ensure that funds are spent in accordance with the purposes for which they were granted.

(4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of State grant funds.

(5) Provide for adequate oversight and monitoring to prevent the misuse of State funds.

(6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection.

(7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all State grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.

(8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (h) of this section.

(9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by State grant funds and each subgrantee project, program, or activity supported by State grant funds.

(10) Provide procedures for the suspension of further disbursements or use of State grant funds for noncompliance with these rules or other inappropriate use of the funds.

(11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of State grant funds.

(12) Provide procedures for the recovery and return to the grantor State agency of unexpended State grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Notwithstanding the provisions of G.S. 150B-2(8a) b, rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by subsection (d) of this section.

(g) **(Effective July 1, 2005)** The Office of State Budget and Management, after consultation with the administering agency, shall have the power to suspend disbursement of State grant funds to grantees or subgrantees, to prevent further use of State grant funds already disbursed, and to recover State grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(h) **(Effective July 1, 2005)** Audit Oversight. — The State Auditor has audit oversight, with respect to State grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends State grant funds. A grantee or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of State grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of State grant funds.

(i) **(Effective July 1, 2005)** Not later than May 1, 2007, and by May 1 of every succeeding year, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees or subgrantees that failed to comply with this section during the prior fiscal year, including the amount of State funds that were disbursed to each of those grantees or subgrantees during that fiscal year and the amount of State funds that were withheld.

(j) **(Effective July 1, 2005)** Grantor State agencies shall submit a list to the State Auditor, in the format prescribed by the State Auditor, by October 31 each year of every grantee to which the agency disbursed State funds in the prior fiscal year, the amount disbursed, the amount disbursed to each grantee, and other such information as required by the State Auditor to comply with the requirements set forth in this section.

(k) **(Effective July 1, 2005)** Civil Actions. — Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County. (2004-196, s. 2.)

Editor's Note. — Session Laws 2004-88, ss. 2(a)-(f), provides: "(a) There is appropriated from the General Fund to the Rural Economic Development Center, Inc., the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year to be allocated as follows:

"(1) To establish the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars

($15,000,000) of the funds appropriated in this section must be used to provide grants under this Program.

"(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings, with priority given to towns with a population of less than 5,000.

"(3) To provide research and demonstration grants.

"(b) The Rural Economic Development Center, Inc., may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the program, including design of program guidelines and evaluation of program results.

"(c) The Rural Economic Development Center, Inc., may use up to four percent (4%) of the funds appropriated by this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

"(d) The Rural Economic Development Center, Inc., shall report annually to the Joint Legislative Commission on Governmental Operations concerning the progress of the North Carolina Economic Infrastructure Program. It must make its initial report on the program no later than January 15, 2005.

"(e) The General Fund Availability Statement for the 2003-2005 fiscal biennium, as enacted in Section 2.2(a) of S.L. 2003-284, does not reflect the additional General Fund revenue collections in the amount of two hundred thirty-five million one hundred thousand dollars ($235,100,000) for the 2003-2004 fiscal year.

"(f) This section becomes effective June 30, 2004."

Session Laws 2004-196, s. 5, made subsections (d), (e), and (f) effective August 17, 2004, and subsections (a) through (c), and (g) through (k) effective July 1, 2005.

§ 143-10. Preparation of budget and public hearing.

The members of the Commission shall, at the request of the Director, attend such public hearing and other meeting as may be held in the preparation of the budget. Said Commission shall act at all times in an advisory capacity to the Director on matters relating to the plan of proposed expenditures of the State government and the means of financing the same.

The Director shall provide for public hearings on any and all estimates to be included in the budget, which shall be held during the months of October and/or November and/or such other times as the Director may fix in the even-numbered years, and may require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or undertakings, and such other persons, corporations and associations, using or receiving or asking for any State funds. Prior to taking any action under this subsection to provide for public hearings, the Governor may consult with the Advisory Budget Commission. (1925, c. 89, s. 11; 1929, c. 100, s. 10; 1985 (Reg. Sess., 1986), c. 955, ss. 60, 61; 2004-124, s. 21.1.)

Editor's Note. — Session Laws 2002-144, s. 4, as amended by Session Laws 2004-124, s. 21.1, effective July 1, 2002, amended G.S. 143-10 by rewriting the last paragraph in subsection (a). The apparent intent was to amend the last paragraph of G.S. 143-143.10(a). Session Laws 2003-221, s. 1, effective June 19, 2003, amended Session Laws 2002-144, s. 4, by substituting "G.S. 143-143.10(a)" for "G.S. 143-10(a)" in the introductory clause. At the direction of the Revisor of Statutes, the amendments by Session Laws 2002-144, s. 4, were never implemented in the section above.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-15.2. Use of General Fund credit balance; priority uses.

Editor's Note. —

Session Laws 2003-284, s. 2.2(f), as amended by Session Laws 2004-124, s. 2.2(b), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer seventy-eight million seven hundred ninety-seven thousand three hundred sixty-one dollars ($78,797,361) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2004. This subsection becomes effective June 30, 2004."

Session Laws 2004-88, ss. (8)(a) and (b), provides: "(a) Notwithstanding G.S. 143-15.2 and G.S.143-15.3, for the 2003-2004 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2004.

"(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2003-2004 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2004."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-15.3. Use of General Fund credit balance; priority uses.

Editor's Note. —

Session Laws 2004-88, s. 8(a), provides: "Notwithstanding G.S. 143-15.2 and G.S.143-15.3, for the 2003-2004 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2004."

§ 143-15.3A. Repairs and Renovations Reserve Account.

Editor's Note. —

Session Laws 2003-284, s. 2.2(f), as amended by Session Laws 2004-124, s. 2.2(b), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer seventy-eight million seven hundred ninety-seven thousand three hundred sixty-one dollars ($78,797,361) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2004. This subsection becomes effective June 30, 2004."

Session Laws 2004-88, s. 8(b), provides: "Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2003-2004 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2004."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 32.3, provides: "Of the funds in the Reserve for Repairs and Renovations for the 2004-2005 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

"Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

"The Board of Governors and the Office of State Budget and Management shall consult

with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-15.3E. JDIG Reserve Fund.

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52. (2004-124, s. 6.12(a).)

Editor's Note. — Session Laws 2004-124, s. 33.6, made this section effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-16.4. Settlement Reserve Fund.

Editor's Note. —

Session Laws 2003-284, s. 2.2(b), as amended by Session Laws 2004-124, s. 2.2(b), provides: "Notwithstanding G.S. 143-16.4(a2), of the funds credited to the Tobacco Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2004-2005 fiscal year, the sum of thirty-five million dollars ($35,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2004-2005 fiscal year."

Session Laws 2003-284, s. 2.2(c), as amended by Session Laws 2004-124, s. 2.2(c), provides: "Notwithstanding G.S. 143-16.4(a1), of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2003-2004 fiscal year, the sum of twenty million dollars ($20,000,000) that would otherwise be deposited in the Fund Reserve established by G.S. 147-86.30(c) and five million ($5,000,000) of the funds that are not reserved pursuant to G.S. 147-86.30(c) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2004-2005 fiscal year.

"Notwithstanding G.S. 143-16.4(a1) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2004-2005 fiscal year, the sum of twenty-five million dollars ($25,000,000) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2004-2005 fiscal year. Any funds remaining after the transfer to the General Fund shall be used in accordance with G.S. 147-86.30."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-23. All maintenance funds for itemized purposes; transfers between objects or line items.

Editor's Note. —

Session Laws 2003-284, s. 6.4, as amended by Session Laws 2003-283, s. 5, as amended by Session Laws 2004-124, s. 6.22, provides: "(a) Funds in the amount of five million dollars ($5,000,000) for the 2003-2004 fiscal year and five million dollars ($5,000,000) for the 2004-2005 fiscal year are appropriated in this act to the Contingency and Emergency Fund. Of these funds:

"(1) Up to two million dollars ($2,000,000) for the 2003-2004 fiscal year and for the 2004-2005 fiscal year may be used for purposes related to the Base Realignment and Closure Act (BRAC), including allocations for individual community efforts; and

"(2) Up to two hundred fifty thousand dollars ($250,000) for the 2003-2004 fiscal year and for the 2004-2005 fiscal year may be expended for statutory purposes other than those set out in G.S. 143-23(a1)(2) or in subdivision (1) of this section. The remainder of these funds shall be expended only for the purposes outlined in G.S. 143-23(a1)(2).

"(b) If funds are expended from the Contingency and Emergency Fund for the purposes set out in subdivision (a)(1) or (a)(2) of this section, the Director of the Budget may use funds otherwise appropriated from the General Fund under this act to replenish the Contingency and Emergency Fund by the same amount."

Session Laws 2003-284, ss. 16.6(a)-(c), provide: "(a) If the cost of providing food and health care to inmates housed in the Division of Prisons is anticipated to exceed the continuation budget amounts provided for that purpose in this act, the Department of Correction shall report the reasons for the anticipated cost increase and the source of funds the Department intends to use to cover those additional needs to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

"(b) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2003-2005 biennium for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

"(c) Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2003-2005 biennium for the purchase of clothing and laundry services for inmates if expenditures are projected to exceed the Department's budget for clothing and laundry services. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount."

Session Laws 2004-124, s. 7.34, as added by Session Laws 2004-199, s. 54, provides: "Notwithstanding G.S. 143-23, the State Board of Education may reorganize the Department of Public Instruction and transfer funds within the budget of the Department to the extent necessary to implement the reorganizations outlined in the reorganization study completed by the Office of State Budget and Management."

Session Laws 2004-124, s. 32.2(d), provides: "Notwithstanding G.S. 143-23, if additional federal funds that require a State match are received for water resources projects or for beach renourishment projects for the 2004-2005 fiscal year, the Director of the Budget may, after consultation with the Joint Legislative Commission on Governmental Operations, transfer funds from General Fund appropriations to match the federal funds. Notwithstanding G.S. 143-16.3, if, after complying with subsections (a) and (b) of this section, the Department has funds available, then the Department may allocate funds for the following projects or any other projects: Silver Lake Harbor (Ocracoke, Hyde County), Far Creek Channel Maintenance (Engelhard, Hyde County), and Walters Slough Maintenance Dredging."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-23.2. Transfers to Department of Health and Human Services.

Editor's Note. —

Session Laws 2003-284, s. 10.20, as amended by Session Laws 2004-124, s. 10.5 (a), provides: "Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of sixty-two million five hundred thousand dollars ($62,500,000) for the 2003-2004 fiscal year and the sum of eighty-six million nine hundred fifty-four thousand two hundred fifty-one dollars ($86,954,251) for the 2004-2005 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143- 23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 5.(b), provides: "Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of five million dollars ($5,000,000) for the 2004-2005 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for the implementation of the Medicaid Management Information System (MMIS)."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.

Editor's Note. —

Session Laws 2003-284, s. 6.2A(a), as amended by Session Laws 2004-124, s. 6.19, provides: "The Office of State Budget and Management, in consultation with the State Controller, shall conduct a review and evaluation of current practices relative to the following issues:

"(1) The proliferation of nonreverting funds and accounts.

"(2) The designation of selected funds as "off-budget".

"(3) The sources of authority, consistent with Article V, Section 7(1) of the Constitution, under which expenditures are being made from each special fund, trust fund, internal service fund, or enterprise fund.

"(4) The proper classification and management of funds as special funds, trust funds, internal service funds, or enterprise funds consistent with criteria adopted by the Governmental Accounting Standards Board.

"(5) Appropriate budget planning within special funds, trust funds, internal service funds, and enterprise funds, including, in particular, the accurate projection of receipts, expenditures, and fund balances and the presentation of that information for legislative review and appropriation action.

"(6) The administration of G.S. 143-27, which requires in part that the over collection of departmental receipts be accompanied by a corresponding reduction in the allotments to institutions, departments, and agencies."

Session Laws 2003-284, s. 6.2A(b), as amended by Session Laws 2004-124, s. 6.19, provides: "Where the review and evaluation reveals problems or other failures, the Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Appropriations Committees of the Senate and House of Representatives no later than January 15, 2005. In particular, the Office of State Budget and Management shall transmit to the General Assembly a list of special funds properly classified together with their estimated beginning balances, estimated receipts and expenditures, and estimated ending balances, and a list of funds currently classified as special funds for which the receipts are more appropriately reflected as offsets to total requirements in General Fund budget codes. The list of special funds properly classified should include funds currently classified as trust funds that are more appropriately classified as special funds."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provi-

sions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-34.1. Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.

(a) Before a department, institution, or other agency of State government establishes a new position or changes the funding of an existing position, the agency must submit the proposed action to the Director for approval. The Director shall review the proposed action to ensure that it is within the amount appropriated to the agency. If the Director approves the action, the Director shall notify the agency and the State Controller of the approval. The State Controller may not honor a voucher in payment of a payroll that includes a new position or a change in an existing position that has not been approved by the Director.

(a1) A department, institution, or other agency of State government may establish new receipt-supported positions only after prior consultation with the Joint Legislative Commission on Governmental Operations. This subsection shall not apply to work-order funded positions in the Department of Transportation that are created for the purpose of highway construction, to positions at The University of North Carolina or its constituent institutions, or to positions established by the Governor to expand the State's capabilities in dealing with the threat of terrorism in the event of an emergency or other exigent circumstances.

(b) Required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for employees whose salaries are paid from general fund or highway fund revenues, or from department, office, institutional or agency receipts, or from nonstate funds, shall be paid from the same source as the source of the employees' salaries. In those instances in which an employee's salary is paid in part from the general fund, or the highway fund, and in part from the department, office, institutional or agency receipts, or from nonstate funds, the required salary-related contributions shall be paid from the general fund, or the highway fund, only to the extent of the proportionate part paid from the general fund, or highway fund, in support of the salary of such employee, and the remainder of the employer's contribution requirements shall be paid from the same source which supplies the remainder of such employee's salary. The requirements of this section as to the source of payment are also applicable to payments on behalf of the employee for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases. The State Controller shall approve the method of payment by State departments, offices, institutions and agencies for employer salary-related requirements of this section, and determine the applicability of the section to an employer's salary-related contribution or payment in behalf of an employee.

(c) The Director of the Budget is authorized to provide eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986,

as amended. The Director of the Budget may authorize State departments, institutions, and agencies to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, he may select a contractor only upon a thorough and completely competitive procurement process.

(d) Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget is authorized to provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not replace, substitute for, or duplicate any benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3, 4, and 6 of Chapter 135 of the General Statutes. The plan may, however, include offerings for products and benefits that are supplemental or additional to these statutory benefits. In providing a plan of flexible compensation, the Director of the Budget may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process. (1949, c. 718, s. 5; 1957, c. 269, s. 2; 1961, c. 1181, s. 4; 1979, 2nd Sess., c. 1137, s. 44; 1983 (Reg. Sess., 1984), c. 1034, s. 162; 1985 (Reg. Sess., 1986), c. 1024, ss. 22, 23; 1989, c. 458, s. 4; 1989 (Reg. Sess., 1990), c. 1059, s. 4; 1991, c. 542, s. 7; 1991 (Reg. Sess., 1992), c. 1044, ss. 14(a), (e), (i); 1993, c. 561, s. 42; 1993 (Reg. Sess., 1994), c. 769, s. 7.28A; 1997-443, s. 33.20(a); 1999-237, s. 28.27(a); 2001-424, s. 32.19A(a); 2001-470, s. 4; 2004-199, s. 35.)

Editor's Note. — Session Laws 2004-124, s. 6.23, provides: "Notwithstanding G.S. 143-34.1(a1), a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations."

Session Laws 2004-124, s. 10.2D, provides: "Pursuant to rules adopted by the State Controller, an employee of the Department of Health and Human Services may, in writing, authorize the Department to periodically deduct from the employee's salary or wages paid for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides:

"Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-199, s. 35, effective August 17, 2004, in subsection (d), substituted "replace, substituted for, or duplicate any" for "include those," and "Statutes. The plan may, however, include offerings for products and benefits that are supplemental or additional to these statutory benefits." for "Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation."

Article 3.

Purchases and Contracts.

§ 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

Editor's Note. — Session Laws 2003-435, 1st Ex. Sess., s. 1.2(c), effective December 16, 2003, provides: "Site development funded by money appropriated under this section is not subject to Article 8 of Chapter 143 of the General Statutes (public contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts), except where public funds are expended the provisions of G.S. 143-48 and G.S. 143-128.2 shall apply. Actions involving expenditures of public moneys or use of public lands for projects and programs involved in site development funded by money appropriated under this section are exempt from the requirements of Article 1 of Chapter 113A of the General Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8."

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides that the amendment to this section by s. 6 of the act becomes effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in s. 10 of the act, or April 1, 2004, whichever occurs first.

§ 143-48.3. Electronic procurement.

(a) The Department of Administration shall develop and maintain electronic or digital standards for procurement. The Department of Administration shall consult with the Office of the State Controller, the Office of Information Technology Services (ITS), the Department of State Auditor, the Department of State Treasurer, The University of North Carolina General Administration, the Community Colleges System Office, and the Department of Public Instruction.

(a1) The Department of Administration shall comply with the State government-wide technical architecture for information technology, as required by the State Chief Information Officer.

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Office of Information Technology Services may, upon request, provide to all State agencies, universities, and community colleges, training in the use of the electronic procurement system.

(c) The Department of Administration shall utilize the Office of Information Technology Services as an Application Service Provider for an electronic procurement system. The Office of Information Technology Services shall operate this electronic procurement system, through State ownership or commercial leasing, in accordance with the requirements and operating standards developed by the Department of Administration and the financial reporting and accounting procedures of the Office of the State Controller.

(d) This section does not otherwise modify existing law relating to procurement between The University of North Carolina, UNC Health Care, community colleges, and the Department of Administration.

(e) The Board of Governors of The University of North Carolina shall exempt North Carolina State University and The University of North Carolina at Chapel Hill from the electronic procurement system authorized by this Article until May 1, 2003. Each exemption shall be subject to the Board of Governors' annual review and reconsideration. Exempted constituent institutions shall continue working with the North Carolina E-Procurement Service as that system evolves and shall ensure that their proposed procurement systems are compatible with the North Carolina E-Procurement Service so that they may take advantage of this service to the greatest degree possible. Before an exempted institution expands any electronic procurement system, that institution shall consult with the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology. By May 1, 2003, the General Assembly shall evaluate the efficacy of the State's electronic procurement system and the inclusion and participation of entities in the system.

(f) Any State entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity subject to this section shall notify the Office of Information Technology Services by January 1 of each year of its intent to participate in the North Carolina E-Procurement Service. (2000-67, s. 7.8; 2000-140, ss. 95(a), 95(b); 2001-424, s. 15.6(b); 2001-513, s. 28(a); 2002-126, ss. 27.1(a), 27.1(b), 27.1(c); 2003-147, s. 7; 2004-129, ss. 40, 40A, 41; 2004-203, s. 72(b).)

Editor's Note. —

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides that the amendment to this section by s. 7 of the act becomes effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in s. 10 of the act, or April 1, 2004, whichever occurs first.

Effect of Amendments. —

Session Laws 2004-129, ss. 40, 40A, and 41, effective July 1, 2004, substituted "State Chief Information Officer" for "Information Resources Management Commission" in subsection (a1); substituted "Legislative Oversight" for "Select" in subsection (e); in subsection (f), substituted "Office of Information Technology Services" for "Information Resources Management Commission," and substituted "by January 1 of each year" for "by January 1, 2002, and annually therefter"; and made a minor punctuation change.

§ 143-49. Powers and duties of Secretary.

Editor's Note. —

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides that the amendment to this section by s. 8 of the act becomes effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in s. 10 of the act, or April 1, 2004, whichever occurs first.

§ 143-52.1. Board of Awards.

(a) There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.

(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.

(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.

(d) The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.

(e) Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board shall be reported monthly by the Board to the chairs of the Joint Legislative Oversight Committee on Information Technology. (1999-434, s. 13; 2001-487, s. 21(e); 2004-129, s. 41A.)

Effect of Amendments. — Session Laws 2004-129, s. 41A, effective July 1, 2004, substituted "Legislative Oversight" for "Select" in subsection (e).

§ 143-53. Rules.

Editor's Note. —

Session Laws 2003-147, s. 12, as amended by Session Laws 2004-203, s. 72(b), provides: "Sections 1 through 9 of this act become effective for a local school administrative unit when the unit is certified by the Department of Public Instruction as being E-Procurement compliant, as provided in Section 10 of this act, or April 1, 2004, whichever occurs first."

§ 143-57.1. Furniture requirements contracts.

(a) To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article. Bids shall be solicited on a historical weighted average of specific contract items and not on a single item within a class of items. Historical weighted average shall be based on information derived

from the State's electronic procurement system, when available, or other available data.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless three qualified vendors are not available. Additionally, if the State Purchasing Officer determines that there are no qualified vendors within the three best qualified vendors who offer furniture manufactured or produced in North Carolina or who are incorporated in the State, the State Purchasing Officer shall expand the number of qualified vendors awarded contracts to as many qualified vendors as is necessary to include a qualified vendor who offers furniture manufactured or produced in North Carolina or who is incorporated in the State, but the State Purchasing Officer shall not be required to expand the number of qualified vendors to more than six qualified vendors. A vendor is qualified under this section if the vendor's products conform to the term contract specifications, the vendor is listed on the State's qualified products list, and the vendor submits a responsive bid.

(4) An agency may purchase from any vendor certified on the contract but shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, and other factors that it considers relevant.

(b) For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items. (1995, c. 136, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 716, s. 30; 2004-115, s. 1.)

Effect of Amendments. — Session Laws 2004-115, s. 1, effective July 1, 2004, and applicable to contracts advertised for bid on or after that date, in subdivision (a)(1) added the last two sentences; and rewrote subdivision (a)(3).

§ 143-59.1A. Preference given to products made in United States.

If the Secretary of Administration or a State agency cannot give preference to North Carolina products or services as provided in G.S. 143-59, the Secretary or State agency shall give preference, as far as may be practicable and to the extent permitted by State law, federal law, and federal treaty, to products or services manufactured or produced in the United States. Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution. (2004-124, s. 6.1.)

Editor's Note. — Session Laws 2004-124, s. 33.6, made this section effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-64. Beverages contracts.

Notwithstanding any other provision of law, local school administrative units, community colleges, and constituent institutions of The University of North Carolina shall competitively bid contracts that involve the sale of juice or bottled water. Contracts for the sale of juice and contracts for the sale of bottled water shall each be bid separately from each other and separately from any other contract, including contracts for other beverages or vending machine services. The local school administrative units, community colleges, and constituent institutions may set quality standards for these beverages, and these standards may be used to accept or reject a bid. (2003-284, s. 6.15(a); 2004-199, s. 38.)

Effect of Amendments. — Session Laws 2004-199, s. 38, effective August 17, 2004, inserted the second sentence.

Article 3A.

Surplus Property.

Part 1. State Surplus Property Agency.

§ 143-64.02. Definitions.

Editor's Note. — Session Laws 2004-124, s. 12.5, provides: "Notwithstanding G.S. 143-64.02(1), the Wildlife Resources Commission is not subject to the payment of fees under G.S. 143-64.05 for the acquisition, receipt, warehousing, distribution, or transfer prior to July 20, 2004, of surplus property or for the transfer or sale prior to July 20, 2004, of recyclable material."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-64.05. Definitions.

Editor's Note. — Session Laws 2004-124, s. 12.5, provides: "Notwithstanding G.S. 143-64.02(1), the Wildlife Resources Commission is not subject to the payment of fees under G.S. 143-64.05 for the acquisition, receipt, warehousing, distribution, or transfer prior to July 20, 2004, of surplus property or for the transfer or sale prior to July 20, 2004, of recyclable material."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 3. Public Agencies.

§ 143-64.6: Repealed by Session Laws 2004-199, s. 36(a), effective August 17, 2004.

Article 8.

Public Contracts.

§ 143-128. Requirements for certain building contracts.

Local Modification. — (As to Article 8) Alleghany: 1989, c. 211, s. 1; (As to Article 8) Cabarrus 2000-85 (expires June 30, 2005); Carteret: 2001-69, s. 1(a) (expires July 1, 2002); Chowan: 1989, c. 397, s. 1; Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1; Dare: 1989, c. 177, s. 1; 1999-40, s. 1; 2002-5, s. 1 (expires July 1, 2003); 2003-47, s. 1 (as to design and construction of administration building and renovation of Old Dare Court House, and expires July 1, 2008); Davidson: 1989, c. 398, s. 1; Durham: 1985 (Reg. Sess., 1986), c. 908; Forsyth: 1993, c. 128; 1998-104 (expires June 30, 2001); (as to Article 8) Forsyth: 2001-54; (as to Article 8) 2001-99 (expires June 30, 2006); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (as to G.S. 143-128) Greene: 1953, c. 718; Johnston: 1995 (Reg. Sess., 1996), c. 611, s. 1; 2002-93, s. 2 (expires June 30, 2005); (as to Art. 8) 1997-37; 2001-135 (expires June 30, 2002); 2002-93, s. 2 (expires June 30, 2005); Mecklenburg: 1993 (Reg. Sess., 1994), c. 573, s. 1; New Hanover: 1983, c. 365; Pasquotank: 1989, c. 268, s. 3; 1989, c. 468, s. 1; (as to Article 8) Stanly: 2001-99 (expires June 30, 2006); Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1; 2000-79, s. 1 (expires December 31, 2002); Tyrrell: 1983, c. 208; 1985, c. 120; 1987, c. 58, s. 1; 1987, c. 58, s. 2; Union: 1991, c. 393, s. 1; Wilson: 1991, c. 200; (as to Article 8) Yancey: 2004-7, s. 1 (expires January 1, 2008); (as to Article 8) city of Charlotte: 1987, c. 329, s. 2; 1998-173, s. 1; 2002-93, s. 1 (expires January 1, 2007); 2000-26, s. 1; (as to Article 8) 2001-248, ss. 1, 2; (as to Article 8) 2001-329, s. 4; (as to Article 8) city of Durham: 1985, c. 714; 1985, c. 727; 1987, c. 789; 2001-350, s. 3; (As to Article 8) 1991, c. 107; city of Greensboro: 1995, c. 54, s. 1; (as to Article 8) city of Greenville: 1998-144; 2004-10 (expires January 1, 2010); city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; 2003-118, s. 1 (as to Article 8, and expires December 31, 2004); (As to Article 8) city of Mount Airy: 2003-281, s. 1; city of Roanoke Rapids: 2001-245, s. 3; (as to Article 8) city of Winston-Salem: 2001-54; town of Ahoskie: 1987 (Reg. Sess., 1988), c. 884; town of Clayton: 1995, c. 125, s. 1; (as to Article 8) town of Garner: 1993, c. 281, s. 4; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Southern Shores: 1995, c. 70, s. 1 (expires October 1, 1998); town of Yadkinville: 1997-3, s. 1; (as to Article 8) village of Bald Head Island: 1989 (Reg. Sess., 1990), c. 925, s. 1; (as to Article 8) village of Pinehurst: 2001-66, s. 1.(a) (expires January 1, 2006); Alamance-Caswell Area Mental Health, Developmental Disabilities and Substance Abuse Authority: 1987, c. 120; (as to Article 8) College of the Albemarle in the city of Elizabeth City: 2001-66, s. 2.(a) (expires January 1, 2006); Albemarle Hospital Board of Trustees: 1989, c. 468, s. 2; (As to Article 8) Board of Trustees of Guilford Technical Community College: 2002-57, s. 2; Charlotte/Mecklenburg Board of Education: 1999-207, ss. 3, 4; 2001-496, s. 10(c); Currituck County Board of Education and City of Albemarle: 1989, c. 409, s. 1; Board of Trustees of Guilford Technical Community College: 2002-57, s. 2 (expires December 31, 2005); (as to Article 8) Johnston County Board of Education: 1997-37 (expires July 30, 2000); 1999-102, s. 1; 2001-496, s. 10(b); (as to Chapter 143, Articles 3 and 8) Piedmont Triad International Authority: 1998-55, s. 11; 2002-146, s. 8 (expires January 1, 2010); (as to Article 8) Raleigh-Durham Airport Authority: 1998-141 (expires January 1, 2003); (as to Article 8) Rowan Salisbury Schools: 1998-78; (as to Article 8) Transylvania Schools: 1999-53, s. 1 (expires June 30, 2001); Tyrrell County Board of Education: 1983, c. 580; 1985, c. 120; Wake County Board of Education: 2001-44, ss. 2, 3 (expires July 1, 2005); (as to Article 8) University of North Carolina at Chapel Hill and East Carolina University: 1987, c. 803, s. 3; University of North Carolina at Chapel Hill: 1985 (Reg. Sess., 1986), c. 865, s. 3; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; 2003-269, s. 1; (as to Article 8) New Hanover Regional Medical Center: 2001-496, s. 10(d) (expires December 31, 2007).

Editor's Note. —

Session Laws 2003-435, 1st Ex. Sess., s. 1.2(c), effective December 16, 2003, provides: "Site development funded by money appropriated under this section is not subject to Article 8 of Chapter 143 of the General Statutes (public

contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts), except where public funds are expended the provisions of G.S. 143-48 and G.S. 143-128.2 shall apply. Actions involving expenditures of public moneys or use of public lands for projects and programs involved in site development funded by money appropriated under this section are exempt from the requirements of Article 1 of Chapter 113A of the General Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8."

CASE NOTES

Trial Court Did Not Have Jurisdiction to Enter Permanent Injunction. — Appeals court: (1) vacated the permanent injunctive relief, which purported to effectively determine the controversy between an unsuccessful bidder for a town's water tank and the town and the successful bidder, based upon whether the town was in the process of awarding the contract in violation of to G.S. 143-128, 143-129 after negotiating with the successful bidder, on its merits, for lack of trial court jurisdiction to award that relief, since the trial court issued the permanent injunction at a hearing held only to determine whether a temporary restraining order was to be continued as a preliminary injunction; and (2) dismissed, and remanded for further proceedings the appeal of the remaining part of the order awarding a preliminary injunction, since that order was a non-final interlocutory order that was not yet appealable. CB&I Constructors, Inc. v. Town of Wake Forest, 157 N.C. App. 545, 579 S.E.2d 502, 2003 N.C. App. LEXIS 736 (2003).

OPINIONS OF ATTORNEY GENERAL

Project Subject to Minority Business Participation Requirements. — Under G.S. 160A-17.1, the governing body of a city is specifically authorized to accept a state grant for constructing "any project"; accordingly, it is appropriate to interpret a former provision of this section pertaining to minority business participation requirements as applying to the construction of waste water collection facilities which were subject to a grant from the Department of Environment and Natural Resources. See opinion of Attorney General to Mr. John T. Carter, Jr., Jacksonville City Attorney, 2002 N.C.A.G. 25 (7/18/02).

Airport Construction Contracts. — Subsection (f1) of this section does not mandate inclusion of a dispute resolution procedure in all contracts for an airport authority's construction projects. See opinion of Attorney General to William O. Cooke, Cooke & Cooke, L.L.P., 2002 N.C.A.G. 32 (11/18/02).

§ 143-128.2. Minority business participation goals.

Editor's Note. —

Session Laws 2003-435, 1st Ex. Sess., s. 1.2(c), effective December 16, 2003, provides: "Site development funded by money appropriated under this section is not subject to Article 8 of Chapter 143 of the General Statutes (public contracts) or Article 3 of Chapter 143 of the General Statutes (purchases and contracts), except where public funds are expended the provisions of G.S. 143-48 and G.S. 143-128.2 shall apply. Actions involving expenditures of public moneys or use of public lands for projects and programs involved in site development funded by money appropriated under this section are exempt from the requirements of Article 1 of Chapter 113A of the General Statutes. This exemption does not apply to an ordinance adopted under G.S. 113A-8."

OPINIONS OF ATTORNEY GENERAL

Contracts Under Federal Law. — Where an airport authority chooses to let contracts under federal law relying upon G.S. 63-54(c), pertaining to federal aid for airports and related facilities, then the requirements of this section would not apply. See opinion of Attorney General to William O. Cooke, Cooke & Cooke, L.L.P., 2002 N.C.A.G. 32 (11/18/02).

§ 143-129.8. Purchase of information technology goods and services.

(a) In recognition of the complex and innovative nature of information technology goods and services and of the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services, a political subdivision of the State may contract for information technology, as defined in G.S. 147-33.81(2), using the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law.

(b) Contracts for information technology may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

(1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).

(2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Proposals submitted under this section shall not be subject to public inspection until a contract is awarded. (2001-328, s. 3; 2004-199, s. 36(b); 2004-203, s. 10.)

Effect of Amendments. — Session Laws 2004-199, s. 36(b) and Session Laws 2004-203, s. 10, effective August 17, 2004, substituted "G.S. 143-129(b)" for "G.S. 143-129(a)" in subdivision (b)(1).

§ 143-135. Limitation of application of Article.

Local Modification. — Ashe: 1959, c. 627; Avery: 1995, c. 175, s. 1; Beaufort: 1955, c. 1136; Brunswick: 1961, c. 503; Cabarrus: 1999-34, s. 1 (expires June 30, 2000); Catawba: 2004-35 (expires Dec. 30, 2006); Duplin: 1983 (Reg. Sess., 1984), c. 959; 1985, c. 124; Franklin: 1957, c. 288; Halifax: 1957, c. 803; Macon: 1983, c. 355; McDowell: 1959, c. 553; Pender: 1955, c. 187; Union: 1985 (Reg. Sess., 1986), c. 914, s. 1; Watauga: 1993 (Reg. Sess., 1994), c. 667, s. 1; city of Asheville: 2001-274 (expires June 30, 2003); city of Belmont: 1967, c. 419; city of Concord: 1999-34, s. 1 (expires June 30, 2000); city of Gastonia: 1967, c. 392; city of Goldsboro: 1991, c. 555, s. 10; city of Lumberton: 1983 (Reg. Sess., 1984), c. 950; city of Marion: 1959, c. 553; city of Monroe: 1985, c. 128; 2000-35, s. 1; city of Newtown: 2004-35 (expires Dec. 30, 2006); town of Boonville: 1993 (Reg. Sess., 1994), c. 667, s. 1; town of Chapel Hill: 2000-97, s. 1; town of Wake Forest: 2003-32, (as to use of qualified labor on electrical distribution feeder circuits project for which construction on the first phase begins no later than December 31, 2003 and construction on the final phase commences no later than December 31, 2009, and as to use of qualified labor on Electrical Substation project for which construction on the first phase begins no later than December 31, 2006); Macon County School Administrative Unit: 1983, c. 355.

Article 9.

Building Code Council and Building Code.

§ 143-138. North Carolina State Building Code.

(a) Preparation and Adoption. — The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council may use as guidance, but is not required to adopt, the requirements of the International Building Code of the International Code Council, the Standard Building Code of the Southern Building Code Congress International, Inc., the Uniform Building Code of the International Conference of Building Officials, the National Building Code of the Building Officials and

Code Administrators, Inc., the National Electric Code, the Life Safety Code, the National Fuel Gas Code, the Fire Prevention Code of the National Fire Protection Association, the Safety Code for Elevators and Escalators, and the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, and standards promulgated by the American National Standards Institute, Standards Underwriters' Laboratories, Inc., and similar national or international agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

(f) Repealed by Session Laws 1989, c. 681, s. 3.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local govern-

mental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Office of Juvenile Justice	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Department of Cultural Resources [State Library]	1
Supreme Court Library	1
Legislative Library	1
Schools	
All state-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public. The proceeds from sales of the Building Code shall be credited to the Insurance Regulatory Fund under G.S. 58-6-25.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall upon conviction only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

(i) Section 1008 of Chapter X of Volume 1 of the North Carolina State Building Code, Title "Special Safety to Life Requirements Applicable to

Existing High-Rise Buildings" as adopted by the North Carolina State Building Code Council on March 9, 1976, as ratified and adopted as follows:

SECTION 1008-SPECIAL SAFETY TO LIFE REQUIREMENTS APPLICABLE TO EXISTING HIGH-RISE BUILDINGS

1008 — GENERAL.

(a) Applicability. — Within a reasonable time, as fixed by "written order" of the building official, and except as otherwise provided in subsection (j) of this section every building the [then] existing, that qualifies for classification under Table 1008.1 shall be considered to be a high-rise building and shall be provided with safety to life facilities as hereinafter specified. All other buildings shall be considered as low-rise. NOTE: The requirements of Section 1008 shall be considered as minimum requirements to provide for reasonable safety to life requirements for existing buildings and where possible, the owner and designer should consider the provisions of Section 506 applicable to new high-rise buildings.

(b) Notification of Building Owner. — The Department of Insurance will send copies of amendments adopted to all local building officials with the suggestion that all local building officials transmit to applicable building owners in their jurisdiction copies of adopted amendments, within six months from the date the amendments are adopted, with the request that each building owner respond to the local building official how he plans to comply with these requirements within a reasonable time.

NOTE: Suggested reasonable time and procedures for owners to respond to the building official's request is as follows:

(1) The building owner shall, upon receipt of written request from the building official on compliance procedures within a reasonable time, submit an overall plan required by 1008(c) below within one year and within the time period specified in the approved overall plan, but not to exceed five years after the overall plan is approved, accomplish compliance with this section, as evidenced by completion of the work in accordance with approved working drawings and specifications and by issuance of a new Certificate of Compliance by the building official covering the work. Upon approval of building owner's overall plan, the building official shall issue a "written order", as per 1008(a) above, to comply with Section 1008 in accordance with the approved overall plan.

(2) The building official may permit time extensions beyond five years to accomplish compliance in accordance with the overall plan when the owner can show just cause for such extension of time at the time the overall plan is approved.

(3) The local building official shall send second request notices as per 1008(b) to building owners who have made no response to the request at the end of six months and a third request notice to no response building owners at the end of nine months.

(4) If the building owner makes no response to any of the three requests for information on how the owner plans to comply with Section 1008 within 12 months from the first request, the building official shall issue a "written order" to the building owner to provide his building with the safety to life facilities as required by this section and to submit an overall plan specified by (1) above within six months with the five-year time period starting on the date of the "written order".

(5) For purposes of this section, the Construction Section of the Division of Facility Services, Department of Health and Human Services, will

notify all non-State owned I-Institutional buildings requiring licensure by the Division of Facility Services and coordinate compliance requirements with the Department of Insurance and the local building official.

(c) Submission of Plans and Time Schedule for Completing Work. — Plans and specifications, but not necessarily working drawings covering the work necessary to bring the building into compliance with this section shall be submitted to the building official within a reasonable time. (See suggested time in NOTE of Section 1008(b) above). A time schedule for accomplishing the work, including the preparation of working drawings and specifications shall be included. Some of the work may require longer periods of time to accomplish than others, and this shall be reflected in the plan and schedule.

NOTE: Suggested Time Period For Compliance:

SUGGESTED TIME PERIOD FOR COMPLIANCE

ITEM	CLASS I (SECTION)	CLASS II (SECTION)	CLASS III (SECTION)	TIME FOR COMPLETION
Signs in Elevator Lobbies and Elevator Cabs	1008.2(h)	1008.3(h)	1008.4(h)	180 days
Emergency Evacuation Plan	1008(b)	NOTE:		180 days
Corridor Smoke Detectors (Includes alternative door closers)	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Manual Fire Alarm	1008.2(a)	1008.3(a)	1008.4(a)	1 year
Voice Communication System Required	1008.2(b)	1008.3(b)	1008.4(b)	2 years
Smoke Detectors Required	1008.2(c)	1008.3(c)	1008.4(c)	1 year
Protection and Fire Stopping for Vertical Shafts	1008.2(f)	1008.3(f)	1008.4(f)	3 years
Special Exit Requirements-Number, Location and Illumination to be in accordance with Section 1007	1008.2(e)	1008.3(e)	1008.4(e)	3 years
Emergency Electrical Power Supply	1008.2(d)	1008.3(d)	1008.4(d)	4 years
Special Exit Facilities Required	1008.2(e)	1008.3(e)	1008.4(e)	5 years
Compartmentation for Institutional Buildings	1008.2(f)	1008.3(f)	1008.4(f)	5 years
Emergency Elevator Requirements	1008.2(h)	1008.3(h)	1008.4(h)	5 years
Central Alarm Facility Required		1008.3(i)	1008.4(i)	5 years
Areas of Refuge Required on Every Eighth Floor			1008.4(j)	5 years
Smoke Venting			1008.4(k)	5 years
Fire Protection of Electrical Conductors			1008.4(l)	5 years
Sprinkler System Required			1008.4(m)	5 years

(d) Building Official Notification of Department of Insurance. — The building official shall send copies of written notices he sends to building owners to

the Engineering and Building Codes Division for their files and also shall file an annual report by August 15th of each year covering the past fiscal year setting forth the work accomplished under the provisions of this section.

(e) Construction Changes and Design of Life Safety Equipment. — Plans and specifications which contain construction changes and design of life safety equipment requirements to comply with provisions of this section shall be prepared by a registered architect in accordance with provisions of Chapter 83A of the General Statutes or by a registered engineer in accordance with provisions of Chapter 89C of the General Statutes or by both an architect and engineer particularly qualified by training and experience for the type of work involved. Such plans and specifications shall be submitted to the Engineering and Building Codes Division of the Department of Insurance for approval. Plans and specifications for I-Institutional buildings licensed by the Division of Facility Services as noted in (b) above shall be submitted to the Construction Section of that Division for review and approval.

(f) Filing of Test Reports and Maintenance on Life Safety Equipment. — The engineer performing the design for the electrical and mechanical equipment, including sprinkler systems, must file the test results with the Engineering and Building Codes Division of the Department of Insurance, or to the agency designated by the Department of Insurance, that such systems have been tested to indicate that they function in accordance with the standards specified in this section and according to design criteria. These test results shall be a prerequisite for the Certificate of Compliance required by (b) above. Test results for I-Institutional shall be filed with the Construction Section, Division of Facility Services. It shall be the duty and responsibility of the owners of Class I, II and III buildings to maintain smoke detection, fire detection, fire control, smoke removal and venting as required by this section and similar emergency systems in proper operating condition at all times. Certification of full tests and inspections of all emergency systems shall be provided by the owner annually to the fire department.

(g) Applicability of Chapter X and Conflicts with Other Sections. — The requirements of this section shall be in addition to those of Sections 1001 through 1007; and in case of conflict, the requirements affording the higher degree of safety to life shall apply, as determined by the building official.

(h) Classes of Buildings and Occupancy Classifications. — Buildings shall be classified as Class I, II or III according to Table 1008.1. In the case of mixed occupancies, for this purpose, the classification shall be the most restrictive one resulting from the application of the most prevalent occupancies to Table 1008.1.

FOOTNOTE: Emergency Plan. — Owners, operators, tenants, administrators or managers of high-rise buildings should consult with the fire authority having jurisdiction and establish procedures which shall include but not necessarily be limited to the following:

(1) Assignment of a responsible person to work with the fire authority in the establishment, implementation and maintenance of the emergency pre-fire plan.

(2) Emergency plan procedures shall be supplied to all tenants and shall be posted conspicuously in each hotel guest room, each office area, and each schoolroom.

(3) Submission to the local fire authority of an annual renewal or amended emergency plan.

(4) Plan should be completed as soon as possible.

1008.1 — ALL EXISTING BUILDINGS SHALL BE CLASSIFIED AS CLASS I, II AND III ACCORDING TO TABLE 1008.1.

TABLE 1008.1

Scope

CLASS	OCCUPANCY GROUP (3)(4)	OCCUPIED FLOOR ABOVE AVERAGE GRADE EXCEEDING HEIGHT (2)
CLASS I	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	60′ but less than 120′ above average grade or 6 but less than 12 stories above average grade.
	Group I-Institutional-Unrestrained	36′ but less than 60′ above average grade or 3 but less than 6 stories above average grade.
CLASS II	Group R-Residential Group B-Business Group E-Educational Group A-Assembly Group H-Hazardous Group I-Institutional-Restrained	120′ but less than 250′ above average grade or 12 but less than 25 stories above average grade.
	Group I-Institutional-Unrestrained	60′ but less than 250′ above average grade or 6 but less than 25 stories above average grade.
CLASS III	Group R-Residential Group B-Business Group E-Educational Group I-Institutional Group A-Assembly Group H-Hazardous	250′ or 25 stories above average grade.

NOTE 1: The entire building shall comply with this section when the building has an occupied floor above the height specified, except that portions of the buildings which do not exceed the height specified are exempt from this section, subject to the following provisions:

(a) Low-rise portions of Class I buildings must be separated from high-rise portions by one-hour construction.

(b) Low-rise portions of Class II and III buildings must be separated from high-rise portions by two-hour construction.

(c) Any required exit from the high-rise portion which passes through the low-rise portions must be separated from the low-rise portion by the two-hour construction.

NOTE 2: The height described in Table 1008.1 shall be measured between the average grade outside the building and the finished floor of the top occupied story.

NOTE 3: Public parking decks meeting the requirements of Section 412.7 and less than 75 feet in height are exempt from the requirements of this section when there is no other occupancy above or below such deck.

NOTE 4: Special purpose equipment buildings, such as telephone equipment buildings housing the equipment only, with personnel occupant load limited to persons required to maintain the equipment may be exempt from any or all of these requirements at the discretion of the Engineering and Building Codes Division provided such special purpose equipment building is separated from other portions of the building by two-hour fire rated construction.

1008.2—REQUIREMENTS FOR EXISTING CLASS I BUILDINGS.

All Class I buildings shall be provided with the following:

(a) An approved manual fire alarm system, meeting the requirements of Section 1125 and applicable portions of NFPA 71, 72A, 72B, 72C or 72D, shall be provided unless the building is fully sprinklered or equipped with an approved automatic fire detection system connected to the fire department.

(b) All Class I buildings shall meet the requirements of Sections 1001-1007.

(c) Smoke Detectors Required. — At least one approved listed smoke detector tested in accordance with UL-167, capable of detecting visible and invisible particles of combustion shall be installed as follows:

(1) All buildings classified as institutional, residential and assembly occupancies shall be provided with listed smoke detectors in all required exit corridors spaced no further than 60′ on center or more than 15′ from any wall. Exterior corridors open to the outside are not required to comply with this requirement. If the corridor walls have one-hour fire resistance rating with all openings protected with 1-3/4 inch solid wood core or hollow metal door or equivalent and all corridor doors are equipped with approved self-closing devices, the smoke detectors in the corridor may be omitted. Detectors in corridors may be omitted when each dwelling unit is equipped with smoke detectors which activate the alarm system.

(2) In every mechanical equipment, boiler, electrical equipment, elevator equipment or similar room unless the room is sprinklered or the room is separated from other areas by two-hour fire resistance construction with all openings therein protected with approved fire dampers and Class B fire doors. (Approved listed fire (heat) detectors may be submitted for these rooms.)

(3) In the return air portion of every air conditioning and mechanical ventilation system that serves more than one floor.

(4) The activation of any detector shall activate the alarm system, and shall cause such other operations as required by this Code.

(5) The annunciator shall be located near the main entrance or in a central alarm and control facility.

NOTE 1: Limited area sprinklers may be supplied from the domestic water system provided the domestic water system is designed to support the design flow of the largest number of sprinklers in any one of the enclosed areas. When supplied by the domestic water system, the maximum number of sprinklers in any one enclosed room or area shall not exceed 20 sprinklers which must totally protect the room or area.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above.

(1) Emergency, exit and elevator cab lighting.

(2) Emergency illumination for corridors, stairs, etc.

(3) Emergency Alarms and Detection Systems. — Power supply for fire alarm and fire detection. Emergency power does not need to be connected to fire alarm or detection systems when they are equipped with their own emergency power supply from float or trickle charge battery in accordance with NFPA standards.

(e) Special Exit Requirements. — Exits and exitways shall meet the following requirements:

(1) Protection of Stairways Required. — All required exit stairways shall be enclosed with noncombustible one-hour fire rated construction with a minimum of 1¾ inch solid core wood door or hollow metal door or 20 minute UL listed doors as entrance thereto. (See Section 1007.5).

(2) Number and Location of Exits. — All required exit stairways shall meet the requirements of Section 1007 to provide for proper number and location and proper fire rated enclosures and illumination of and designation for means of egress.

(3) Exit Outlets. — Each required exit stair shall exit directly outside or through a separate one-hour fire rated corridor with no openings except the necessary openings to exit into the fire rated corridor and from the fire rated corridor and such openings shall be protected with 1¾ inch solid wood core or hollow metal door or equivalent unless the exit floor level and all floors below are equipped with an approved automatic sprinkler system meeting the requirements of NFPA No. 13.

(f) Smoke Compartments Required for I-Institutional Buildings. — Each occupied floor shall be divided into at least two compartments with each compartment containing not more than 30 institutional occupants. Such compartments shall be subdivided with one-half hour fire rated partitions which shall extend from outside wall to outside wall and from floor to and through any concealed space to the floor slab or roof above and meet the following requirements:

(1) Maximum area of any smoke compartment shall be not more than 22,500 square feet in area with both length and width limited to 150 feet.

(2) At least one smoke partition per floor regardless of building size forming two smoke zones of approximately equal size.

(3) All doors located in smoke partitions shall be properly gasketed to insure a substantial barrier to the passage of smoke and gases.

(4) All doors located in smoke partitions shall be no less than 1¾ inch thick solid core wood doors with UL, ¼ inch wire glass panel in metal frames. This glass panel shall be a minimum of 100 square inches and a maximum of 720 square inches.

(5) Every door located in a smoke partition shall be equipped with an automatic closer. Doors that are normally held in the open position shall be equipped with an electrical device that shall, upon actuation of the fire alarm or smoke detection system in an adjacent zone, close the doors in that smoke partition.

(6) Glass in all corridor walls shall be ¼", UL approved, wire glass in metal frames in pieces not to exceed 1296 square inches.

(7) Doors to all patient rooms and treatment areas shall be a minimum of 1¾ inch solid core wood doors except in fully sprinklered buildings.

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible one-hour fire rated construction with shaft wall openings protected with 1¾ inch solid core wood door or hollow metal door. Vertical shafts (such as electrical wiring shafts) which have openings such as ventilated doors on each floor must be fire stopped at the floor slab level with noncombustible materials having a fire resistance rating not less than one hour to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shafts.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall openings do not need any additional protection.

(h) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. The required emergency sign shall be readable at all

times and shall be a minimum of 1/2″ high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

1008.3 — REQUIREMENTS FOR EXISTING CLASS II BUILDINGS.

All Class II buildings must meet the following requirements:

(a) Manual Fire Alarm. — Provide manual fire alarm system in accordance with Section 1008.2(a). In addition, buildings so equipped with sprinkler alarm system or automatic fire detection system must have at least one manual fire alarm station near an exit on each floor as a part of such sprinkler or automatic fire detection and alarm system. Such manual fire alarm systems shall report a fire by floor.

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective basis which can be heard clearly by all occupants in all exit stairways, elevators, elevator lobbies, corridors, assembly rooms and tenant spaces.

NOTE 1: This system shall function so that in the event of one circuit or speaker being damaged or out of service, the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(c) Smoke Detectors Required. — Smoke detectors are required as per Section 1008.2(c). The following are additional requirements:

(1) Storage rooms larger than 24 square feet or having a maximum dimension of over eight feet shall be provided with approved fire detectors or smoke detectors installed in an approved manner unless the room is sprinklered.

(2) The actuation of any detectors shall activate the fire alarm system.

(d) Emergency Electrical Power Supply. — An emergency electrical power supply shall be provided to supply the following for a period of not less than two hours. An emergency electrical power supply may consist of generators, batteries, a minimum of two remote connections to the public utility grid supplied by multiple generating stations, a combination of the above. Power supply shall furnish power for items listed in Section 1008.2(d) and the following:

(1) Pressurization Fans. — Fans to provide required pressurization, smoke venting or smoke control for stairways.

(2) Elevators. — The designated emergency elevator.

(e) Special Exit Facilities Required. — The following exit facilities are required:

(1) The special exit facilities required in 1008.2(e) are required. All required exit stairways shall be enclosed with noncombustible two-hour fire rated construction with a minimum of 1½ hour Class B-labeled doors as entrance thereto: (See Section 1007.5).

(2) Smoke-Free Stairways Required. — At least one stairway shall be a smoke free stairway in accordance with Section 1104.2 or at least one stairway shall be pressurized to between 0.15 inch and 0.35 inch water column pressure with all doors closed. Smoke-free stairs and pressurized stairs shall be identified with signs containing letters a minimum of ½ inch high containing the words "PRIMARY EXIT STAIRS" unless all stairs are smoke free or pressurized. Approved exterior stairways meeting the requirements of Chapter XI or ap-

proved existing fire escapes meeting the requirements of Chapter X with all openings within 10 feet protected with wire glass or other properly designed stairs protected to assure similar smoke-free vertical egress may be permitted. All required exit stairways shall also meet the requirements of Section 1008.2(e).

(3) If stairway doors are locked from the stairway side, keys shall be provided to unlock all stairway doors on every eighth floor leading into the remainder of the building and the key shall be located in a glass enclosure adjacent to the door at each floor level (which may sound an alarm when the glass is broken). When the key unlocks the door, the hardware shall be of the type that remains unlocked after the key is removed. Other means, approved by the building official may be approved to enable occupants and fire fighters to readily unlock stairway doors on every eighth floor that may be locked from the stairwell side. The requirements of this section may be eliminated in smoke-free stairs and pressurized stairs provided fire department access keys are provided in locations acceptable to the local fire authority.

(f) Compartmentation for I-Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — All vertical shafts extending more than one floor including elevator shafts, plumbing shafts, electrical shafts and other vertical openings shall be protected with noncombustible two-hour fire rated construction with Class B-labeled door except for elevator doors which shall be hollow metal or equivalent. All vertical shafts which are not so enclosed must be fire stopped at each floor slab with noncombustible materials having a fire resistance rating of not less than two hours to provide an effective barrier to the passage of smoke, heat and gases from floor to floor through such shaft.

EXCEPTION: Shaft wall openings protected in accordance with NFPA No. 90A and openings connected to metal ducts equipped with approved fire dampers within the shaft wall opening do not need any additional protection.

(h) Emergency Elevator Requirements.

(1) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby, or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.

NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(2) Identification of Emergency Elevator. — At least one elevator shall be identified as the emergency elevator and shall serve all floor levels. NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and shall be a minimum of ½ inch high block letters with the words: "IN CASE OF FIRE DO NOT USE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(i) Central Alarm Facility Required. — A central alarm facility accessible at all times to fire department personnel or attended 24 hours a day, shall be provided and shall contain the fcllowing:

(1) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(2) Public service telephone.

(3) Fire detection and alarm systems annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received. These signals shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(4) Master keys for access from all stairways to all floors.

(5) One-way voice emergency communications system controls.

1008.4 — REQUIREMENTS FOR EXISTING CLASS III BUILDINGS.

All Class III Buildings shall be provided with the following:

(a) Manual Fire Alarm System. — A manual fire alarm system meeting the requirements of Section 1008.3(a).

(b) Voice Communication System Required. — An approved voice communication system or systems operated from the central alarm and control facilities shall be provided and shall consist of the following:

(1) One-Way Voice Communication Public Address System Required. — A one-way voice communication system shall be established on a selective or general basis which can be heard clearly by all occupants in all elevators, elevator lobbies, corridors, and rooms or tenant spaces exceeding 1,000 sq. ft. in area.

NOTE 1: This system shall be designed so that in the event of one circuit or speaker being damaged or out of service the remainder of the system shall continue to be operable.

NOTE 2: This system shall include provisions for silencing the fire alarm devices when the loud speakers are in use, but only after the fire alarm devices have operated initially for not less than 15 seconds.

(2) Two-way system for use by both fire fighters and occupants at every fifth level in stairways and in all elevators.

(3) Within the stairs at levels not equipped with two-way voice communications, signs indicating the location of the nearest two-way device shall be provided.

NOTE: The one-way and two-way voice communication systems may be combined.

(c) Smoke Detectors Required. — Approved listed smoke detectors shall be installed in accordance with Section 1008.3(c) and in addition, such detectors shall terminate at the central alarm and control facility and be so designed that it will indicate the fire floor or the zone on the fire floor.

(d) Emergency Electrical Power Supply. — Emergency electrical power supply meeting the requirements of Section 1008.3(d) to supply all emergency equipment required by Section 1008.3(d) shall be provided and in addition, provisions shall be made for automatic transfer to emergency power in not more than ten seconds for emergency illumination, emergency lighting and emergency communication systems. Provisions shall be provided to transfer power to a second designated elevator located in a separate shaft from the primary emergency elevator. Any standpipe or sprinkler system serving occupied floor areas 400 feet or more above grade shall be provided with on-site generated power or diesel driven pump.

(e) Special Exit Requirements. — All exits and exitways shall meet the requirements of Section 1008.3(e).

(f) Compartmentation of Institutional Buildings Required. — See Section 1008.2(f).

(g) Protection and Fire Stopping for Vertical Shafts. — Same as Class II buildings. See Section 1008.3(g).

(h) Emergency Elevator Requirements.

(1) Primary Emergency Elevator. — At least one elevator serving all floors shall be identified as the emergency elevator with identification signs both outside and inside the elevator and shall be provided with emergency power to meet the requirements of Section 1008.3(c).
NOTE: This elevator will have a manual control in the cab which will override all other controls including floor call buttons and door controls.

(2) Elevator Recall. — Each elevator shall be provided with an approved manual return. When actuated, all cars taking a minimum of one car at a time, in each group of elevators having common lobby, shall return directly at normal car speed to the main floor lobby or to a smoke-free lobby leading most directly to the outside. Cars that are out of service are exempt from this requirement. The manual return shall be located at the main floor lobby.
NOTE: Manually operated cars are considered to be in compliance with this provision if each car is equipped with an audible or visual alarm to signal the operator to return to the designated level.

(3) Signs in Elevator Lobbies and Elevator Cabs. — Each elevator lobby call station on each floor shall have an emergency sign located adjacent to the call button and each elevator cab shall have an emergency sign located adjacent to the floor status indicator. These required emergency signs shall be readable at all times and have a minimum of ½" high block letters with the words: "IN CASE OF FIRE, UNLESS OTHERWISE INSTRUCTED, DO NOT USE THE ELEVATOR — USE THE EXIT STAIRS" or other words to this effect.

(4) Machine Room Protection. — When elevator equipment located above the hoistway is subject to damage from smoke particulate matter, cable slots entering the machine room shall be sleeved beneath the machine room floor to inhibit the passage of smoke into the machine room.

(5) Secondary Emergency Elevator. — At least one elevator located in separate shaft from the Primary Emergency Elevator shall be identified as the "Secondary Emergency Elevator" with identification signs both outside and inside the elevator. It will serve all occupied floors above 250 feet and shall have all the same facilities as the primary elevator and will be capable of being transferred to the emergency power system.
NOTE: Emergency power supply can be sized for nonsimultaneous use of the primary and secondary emergency elevators.

(i) Central Alarm and Control Facilities Required.

(1) A central alarm facility accessible at all times to Fire Department personnel or attended 24 hours a day, shall be provided. The facility shall be located on a completely sprinklered floor or shall be enclosed in two-hour fire resistive construction. Openings are permitted if protected by listed 1½ hour Class B-labeled closures or water curtain devices capable of a minimum discharge of three gpm per lineal foot of opening. The facility shall contain the following:

(i) Facilities to automatically transmit manual and automatic alarm signals to the fire department either directly or through a signal monitoring service.

(ii) Public service telephone.

(iii) Direct communication to the control facility.
(iv) Controls for the voice communication systems.
(v) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received, those signals, shall be both audible and visual with a silence switch for the audible.

NOTE: Detectors in HVAC systems used for fan shut down need not be annunciated.

(2) A control facility (fire department command station) shall be provided at or near the fire department response point and shall contain the following:
(i) Elevator status indicator.
NOTE: Not required in buildings where there is a status indicator at the main elevator lobby.
(ii) Master keys for access from all stairways to all floors.
(iii) Controls for the two-way communication system.
(iv) Fire detection and alarm system annunciator panels to indicate the type of signal and the floor or zone from which the fire alarm is received.
(v) Direct communication to the central alarm facility.

(3) The central alarm and control facilities may be combined in a single approved location. If combined, the duplication of facilities and the direct communication system between the two may be deleted.

(j) Areas of Refuge Required. — Class III buildings shall be provided with a designated "area of refuge" at the 250 ft. level and on at least every eighth floor or fraction thereof above that level to be designed so that occupants above the 250 ft. level can enter at all times and be safely accommodated in floor areas meeting the following requirements unless the building is completely sprinklered:

(1) Identification and Size. — These areas of refuge shall be identified on the plans and in the building as necessary. The area of refuge shall provide not less than 3 sq. ft. per occupant for the total number of occupants served by the area based on the occupancy content calculated by Section 1105. A minimum of two percent (2%) of the number of occupants on each floor shall be assumed to be handicapped and no less than 16 sq. ft. per handicapped occupant shall be provided. Smoke proof stairways meeting the requirements of Section 1104.2 and pressurized stairways meeting the requirements of Section 1108.3(e)(2) may be used for ambulatory occupants at the rate of 3 sq. ft. of area of treads and landings per person, but in no case shall the stairs count for more than one-third of the total occupants. Doors leading to designated areas of refuge from stairways or other areas of the building shall not have locking hardware or shall be automatically unlocked upon receipt of any manual or automatic fire alarm signal.

(2) Pressurized. — The area of refuge shall be pressurized with 100% fresh air utilizing the maximum capacity of existing mechanical building air conditioning system without recirculation from other areas or other acceptable means of providing fresh air into the area.

(3) Fire Resistive Separation. — Walls, partitions, floor assemblies and roof assemblies separating the area of refuge from the remainder of the building shall be noncombustible and have a fire resistance rating of not less than one hour. Duct penetrations shall be protected as required for penetrations of shafts. Metallic piping and metallic conduit may penetrate or pass through the separation only if the openings around the piping or conduit are sealed on each side of the penetrations with impervious noncombustible materials to prevent

the transfer of smoke or combustion gases from one side of the separation to the other. The fire door serving as a horizontal exit between compartments shall be so installed, fitted and gasketed to provide a barrier to the passage of smoke.

(4) Access Corridors. — Any corridor leading to each designated area of refuge shall be protected as required by Sections 1104 and 702. The capacity of an access corridor leading to an area of refuge shall be based on 150 persons per unit width as defined in Section 1105.2. An access corridor may not be less than 44 inches in width. The width shall be determined by the occupant content of the most densely populated floor served. Corridors with one-hour fire resistive separation may be utilized for area of refuge at the rate of three sq. ft. per ambulatory occupant provided a minimum of one cubic ft. per minute of outside air per square foot of floor area is introduced by the air conditioning system.

(5) Penetrations. — The continuity of the fire resistance at the juncture of exterior walls and floors must be maintained.

(k) Smoke Venting. — Smoke venting shall be accomplished by one of the following methods in nonsprinklered buildings:

(1) In a nonsprinklered building, the heating, ventilating and air conditioning system shall be arranged to exhaust the floor of alarm origin at its maximum exhausting capacity without recirculating air from the floor of alarm origin to any other floor. The system may be arranged to accomplish this either automatically or manually. If the air conditioning system is also used to pressurize the areas of refuge, this function shall not be compromised by using the system for smoke removal.

(2) Venting facilities shall be provided at the rate of 20 square feet per 100 lineal feet or 10 square feet per 50 lineal feet of exterior wall in each story and distributed around the perimeter at not more than 50 or 100 foot intervals openable from within the fire floor. Such panels and their controls shall be clearly identified.

(3) Any combination of the above two methods or other approved designs which will produce equivalent results and which is acceptable to the building official.

(l) Fire Protection of Electrical Conductors. — New electrical conductors furnishing power for pressurization fans for stairways, power for emergency elevators and fire pumps required by Section 1008.4(d) shall be protected by a two-hour fire rated horizontal or vertical enclosure or structural element which does not contain any combustible materials. Such protection shall begin at the source of the electrical power and extend to the floor level on which the emergency equipment is located. It shall also extend to the emergency equipment to the extent that the construction of the building components on that floor permits. New electrical conductors in metal raceways located within a two-hour fire rated assembly without any combustible therein are exempt from this requirement.

(m) Automatic Sprinkler Systems Required.

(1) All areas which are classified as Group M-mercantile and Group H-hazardous shall be completely protected with an automatic sprinkler system.

(2) All areas used for commercial or institutional food preparation and storage facilities adjacent thereto shall be provided with an automatic sprinkler system.

(3) An area used for storage or handling of hazardous substances shall be provided with an automatic sprinkler system.

(4) All laboratories and vocational shops in Group E, Educational shall be provided with an automatic sprinkler system.

(5) Sprinkler systems shall be in strict accordance with NFPA No. 13 and the following requirements:
The sprinkler system must be equipped with a water flow and supervisory signal system that will transmit automatically a water flow signal directly to the fire department or to an independent signal monitoring service satisfactory to the fire department.

(j) Subsection (i) of this section does not apply to business occupancy buildings as defined in the North Carolina State Building Code except that evacuation plans as required on page 8, lines 2 through 16 [Section 1008, footnote following subsection (h)], and smoke detectors as required for Class I Buildings as required by Section 1008.2, page 11, lines 5 through 21 [Section 1008.2, subdivision (c)(1)]; Class II Buildings as required by Section 1008.3, page 17, lines 17 through 28 and page 18, lines 1 through 10 [Section 1008.3, subsections (c) and (d)]; and Class III Buildings, as required by Section 1008.4, lines 21 through 25 [Section 1008.4, subsection (c)] shall not be exempted from operation of this act as applied to business occupancy buildings, except that the Council shall adopt rules that allow a business occupancy building built prior to 1953 to have a single exit to remain if the building complies with the Building Code on or before December 31, 2006.

(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006.

(k) For purposes of use in the Code, the term "Family Care Home" shall mean an adult care home having two to six residents.

(*l*) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5; 1981, c. 677, s. 3; c. 713, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2D; c. 1348, s. 1; 1983, c. 614, s. 3; 1985, c. 576, s. 1; c. 622, s. 2; c. 666, s. 39; 1989, c. 25, s. 2; c. 681, ss. 2, 3, 9, 10, 18, 19; c. 727, ss. 157, 158; 1991 (Reg. Sess., 1992), c. 895, s. 1; 1993, c. 329, ss. 1, 3; c. 539, s. 1009; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 111, s. 1; c. 242, s. 1; c. 507, s. 27.8(r); c. 535, s. 30; 1997-26, ss. 1-3, 5; 1997-443, ss. 11A.93, 11A.94, 11A.118(a), 11A.119(a); 1998-57, s. 2; 1998-172, s. 1; 1998-202, s. 4(u); 1999-456, s. 40; 2000-137, s. 4(x); 2000-140, s. 93.1(a); 2001-141, ss. 1, 2, 3, 4; 2001-421, ss. 1.1, 1.2, 1.5; 2001-424, s. 12.2(b); 2002-144, s. 5; 2003-221, s. 6; 2003-284, s. 22.2; 2004-124, ss. 21.1, 21.2.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2002-144, s. 5, as amended by Session Laws 2004-124, s. 21.1, effective July 1, 2002, in subsection (g), deleted the Clerk of the Superior Court from the list of government officials who receive a copy of the State Building Code, changed the number of copies of the State Building Code received by the Department of Cultural Resources State Library from 5 to 1, changed the number of copies of the State Building Code received by the Supreme Court Library from 2 to 1, and added the second sentence in the last paragraph.

Session Laws 2004-124, s. 21.2, effective July 1, 2004, deleted the second paragraph of subsection (d).

CASE NOTES

Adoption of State Building Code Not a Waiver of Sovereign Immunity. — Adoption of the State Building Code did not act as a waiver of a county's sovereign immunity in regards to a suit for negligent building inspections. Norton v. SMC Bldg., Inc., 156 N.C. App. 564, 577 S.E.2d 310, 2003 N.C. App. LEXIS 206 (2003).

§ 143-143.5. (Expires December 1, 2005 — See editor's note) Access to toilets in shopping malls.

Notwithstanding any other law or rule, a horizontal travel distance of 300 feet for access to public use toilets in covered mall buildings shall be allowed. (2004-199, s. 37(a).)

Editor's Note. — Session Laws 2004-199, s. 37(b), made this section effective August 17, 2004, and applicable to covered mall buildings for which building permits are issued on or before December 1, 2005. This section expires December 1, 2005.

§§ 143-143.6 through 143-143.7: Reserved for future codification purposes.

Article 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.2. Definitions.

(a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, 'killed in the line of duty' shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes. For purposes of this Article, when a fireman dies as the direct and

proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the fireman is presumed to have been killed in the line of duty.

(d) The term "law-enforcement officer," "officer," or fireman" shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees and probation and parole officers of the North Carolina Department of Correction and all full-time institutional and detention employees of the Department of Juvenile Justice and Delinquency Prevention. The term "firemen" shall mean both "eligible fireman"; or "fireman" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties.

(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the armed forces of this country.

(f) The term "official duties" means those duties performed while en route to, engaged in, or returning from training, or in the course of responding to, engaged in or returning from a call by the department of which he is a member, or from a call for assistance from any department or such organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina, when served or aided by a department from within the State of North Carolina. While within the State of North Carolina, any eligible person, as defined in this section or in G.S. 58-86-25, who renders service or assistance, of his own volition, at the scene of an emergency, is performing his official duties when:

(1) Reasonably apparent circumstances require prompt decisions and actions to protect persons and property; and

(2) The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any person's life. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048; 1979, c. 516, ss. 2, 3; c. 869; 1981, c. 944, s. 1; 1983, c. 761, s. 237; 1987, c. 812; 1987 (Reg. Sess., 1988), c. 1050, s. 1; 1989, c. 727, s. 218(97); 1989 (Reg. Sess., 1990), c. 1024, s. 32; 1991 (Reg. Sess., 1992), c. 833, s. 5; 1997-443, ss. 11A.118(a), 11A.119(a); 2000-137, s. 4(y); 2003-284, s. 30.18A(b); 2004-124, s. 31.18C(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 31.18C(c), effective July 20, 2004, and applicable to persons killed in the line of duty on or after that date, inserted "and probation and parole officers" following "full-time custodial employees" in the first sentence of subsection (d).

CASE NOTES

Cited in Rosero v. Blake, 357 N.C. 193, 581 S.E.2d 41, 2003 N.C. LEXIS 605 (2003).

Article 12F.

Separate Insurance Benefits Plan for State and Local Governmental Law-Enforcement Officers.

§ 143-166.60. Separate insurance benefits plan for law-enforcement officers.

Study Commission on State Disability Income Plan, Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers. — Session Laws 2003-284, s. 30.20(a)-(i), as amended by Session Laws 2004-78, s. 5, provides: "(a) There is established a Study Commission on the State Disability Income Plan, the State Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers.

"(b) The Commission shall be comprised of 13 members as follows:

"(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.

"(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be famil-

iar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.

"(3) The State Treasurer, or the Treasurer's designee.

"(4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

"(5) The Chair of the North Carolina Industrial Commission, or the Chair's designee.

"(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

"(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

"Any vacancy shall be filled by the officer who made the original appointment."

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

Cross References. — See note at G.S. 143-214.7 relating to Session Laws 2004-163 and Phase II Stormwater Permit application and standards.

Expand Express Review Pilot Program — Session Laws 2004-124, ss. 12.9(a)-(f), provides: "(a) The Department of Environment and Natural Resources shall continue the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 that was implemented in the Wilmington and Raleigh regional offices and shall expand the Express Review Pilot Program to two additional regional offices within the Department, to be selected by the Department based on the Department's determination of where the Pilot Program is most needed.

"(b) The Department of Environment and Natural Resources shall continue and support the eight positions that were authorized under Section 11.4A of S.L. 2003-284 to administer the expanded Express Review Pilot Program under this section. This expanded Program and these positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(c) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support may be funded for the 2004-2005 fiscal year from funds appropriated in this act to the Department of Environment and Natural Resources for this purpose. It is the intent of the General Assembly that these positions and support be funded in future fiscal years from the Express Review Fund.

"(d) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(e) No later than March 1, 2005, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the continued Express Pilot Review Program and whether it recommends that the Program be continued or expanded and any other findings or recommendations, including any legislative proposals, that it deems pertinent.

"(f) Subsection (c) of this section becomes effective January 1, 2005. The remaining subsections of this section become effective July 1, 2004."

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

CASE NOTES

Cited in Brinkman v. Barrett Kays & Assocs., P.A., 155 N.C. App. 738, 575 S.E.2d 40, 2003 N.C. App. LEXIS 17 (2003); N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

§ 143-214.1. Water; water quality standards and classifications; duties of Commission.

CASE NOTES

Illustrative Cases. — Because the hog waste discharged by the facility owner continued to be intermixed with the waters of the State, the North Carolina Department of Environment and Natural Resources was entitled to assess a penalty under G.S. 143- 215.6A for each day that the violation continued, and the trial court erred in reducing the number of dissolved oxygen violations from eight to one. Murphy Family Farms v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 338, 585 S.E.2d 446, 2003 N.C. App. LEXIS 1793 (2003), cert. granted, 358 N.C. 155, 592 S.E.2d 690 (2004).

Cited in N.C. Home Bldrs. Ass'n v. Envtl. Mgmt. Comm'n, 155 N.C. App. 408, 573 S.E.2d 732, 2002 N.C. App. LEXIS 1617 (2002), cert. denied, 357 N.C. 62, 579 S.E.2d 392 (2003).

§ 143-214.6: Repealed by Session Laws 2004-195, s. 3.1, effective August 17, 2004.

§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. — The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the

Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year. (1989, c. 447, s. 2; 1995, c. 507, s. 27.8(q); 1997-458, s. 7.1; 2004-124, s. 6.29(a).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-163, s. 15, provides: "This act is effective when it becomes law and expires 1 October 2001."

Temporary Implementation of Federal Phase II Stormwater Management Requirements. — Session Laws 2004-163, s. 14, provides: "Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater Management Rule, as defined in Section 11 [12] of this act, and the text of Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002 as notes to G.S. 143-214.7."

Session Laws 2004-163, ss. 1-13, reads as follows:

"SECTION 1. Phase II Stormwater Permit Application and Standards. — An application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by an owner or operator of a small municipal separate storm sewer system (MS4) located in whole or in part within an urbanized area as designated by the 1990 or 2000 census by the Bureau of the Census shall be deemed timely received if the application was submitted to the Department in accordance with the application schedule set out in Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater

management under this section, an applicant shall develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The evaluation of the postconstruction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall be conducted as provided in the Stormwater Management Rule. A municipality with a population of less than 1,000, including a municipality designated by the 1990 or 2000 census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

"SECTION 2. New Development and Redevelopment in Unincorporated Areas of Counties. —

"(1) New development or redevelopment located in the unincorporated area of a county shall comply with the standards set forth in the Stormwater Management Rule beginning 1 July 2006 if the new development or redevelopment is located in:

"a. An area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census.

"b. The unincorporated area of a county outside of a municipality designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census that:

"1. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

"2. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

"3. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

"c. An area delineated pursuant to subdivision (2) of this section.

"d. A county in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census; (ii) the area described in sub-subdivision b. of this subdivision; (iii) the area delineated pursuant to subdivision 2 of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 7 of this act; and (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 8 of this act equals or exceeds eighty-five percent (85%) of the total geographic area of the county.

"(2) Delineation process. — The Commission shall delineate regulated coverage areas as provided in this subdivision.

"a. Schedule. — The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

"b. Potential candidate coverage areas. — A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 7 of this act that:

"1. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

"2. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

"3. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

"c. Identification of candidate coverage areas. — The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of this subdivision as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

"d. Notice and comment on candidacy. — The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.

"e. Delineation of regulated coverage areas. — After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:

"1. Adversely impacts water quality.

"2. Results in a significant contribution of pollutants to sensitive receiving waters,

taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

"f. Notice of delineation. — The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

"(3) Except as provided in this subdivision and Section 5 of this act, the Commission shall administer and enforce the standards for new development and redevelopment in the regulated coverage areas. To the extent that the new development or redevelopment is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 5 of this act.

"SECTION 3. Coordination of Phase II and Other Stormwater Management Programs. — In any circumstance where any stormwater control requirement under a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management conflicts or overlaps with any stormwater control requirement under any other water quality program, the most stringent requirement shall apply. The Secretary of Environment and Natural Resources or the Secretary's designee shall resolve any dispute as to whether there is a conflict or overlap between or among stormwater management requirements and shall determine which requirement shall be deemed the most stringent.

"SECTION 4. General Permit.— The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for postconstruction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall require a permittee to meet the standards set out in the Stormwater Management Rule but shall not impose any requirement on the permittee that exceeds the standards set out in the Stormwater Management Rule. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit under Section 1 of this act may submit a notice of intent to becovered under the general permit to the Commission. The Commission shall treat an application for a permit under Section 1 of this act as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this section.

"SECTION 5. Delegation. — A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Section 2 of this act may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of this act and the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this act and the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

"SECTION 6. Phase II Stormwater Implementation Deadlines.

"(1) For an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by an owner or operator of a small municipal separate storm sewer system (MS4) located in whole or in part within an urbanized area as designated by the 1990 census by the Bureau of the Census, the Commission shall send a draft permit decision to public notice by 1 November 2004.

"(2) For an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by an owner or operator of a small municipal separate storm sewer system (MS4) located in whole or in part within an urbanized area as designated by the 2000 census by the Bureau of the Census, the Commission shall send a draft permit decision to public notice by 1 May 2005.

"(3) A public entity designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition) shall develop and implement postconstruction stormwater management measures within 24 months of the date on which its Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management is issued.

"(4) A public entity designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 7 of this act shall develop and implement postconstruction stormwater management measures within 36 months of the date on which its Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management is issued.

"SECTION 7. Designation of Regulated Entities. — A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.

"(1) Federal designation. — A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).

"(2) State designation process. — The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in this subdivision.

"a. Designation schedule. — The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

"b. Identification of candidate regulated entities. — The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

"1. Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

"2. Serves a public entity that has not been designated pursuant to subdivision (1) of this section and that has a population of more than 10,000 and a population density of 1,000 people per square mile or more.

"c. Notice and comment on candidacy. — The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.

"d. Designation of regulated entities. — After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:

"1. The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.

"2. The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.

"3. The public entity has an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.

"4. The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.

"5. The municipal separate storm sewer system (MS4) either discharges stormwater that results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine

the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

"e. Notice of designation. — The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.

"f. Application schedule. — A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

"(3) Designation under a total maximum daily load (TMDL) implementation plan. — The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

"SECTION 8. Petition Process.— A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

"(1) Connected discharge petition. — An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

"(2) Adverse impact petition. — Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

"a. Petition review. — The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:

"1. The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater to sensitive receiving waters in an area with: (i) an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years; (ii) a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years; or (iii) an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.

"2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to sensitive receiving waters.

"3. The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.

"b. Types of evidence for required showing. — Petitioners may make the required showing by providing to the Commission the following information:

"1. Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.

"2. Scientific or technical literature that supports the sampling methods.

"3. Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.

"4. A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.

"5. For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded.

"6. For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.

"c. Water quality protection program offset. — If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to insure compliance with a TMDL implementation plan.

"(3) Petition administration. — The Commission shall process petitions in the following manner:

"a. The Commission shall only accept petitions submitted on Department forms.

"b. A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.

"c. The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.

"d. The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.

"e. The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.

"f. The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

"g. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

"1. If the Commission determines that the owner or operator of the municipal

separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

"2. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.

"h. The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification. If the owner or operator of a municipal separate storm sewer system is a municipality with a population of less than 5,000, the municipality must submit an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 24 months of the date of notification.

"SECTION 9. Model Ordinance. — Pursuant to G.S. 143-214.7(c), the Environmental Management Commission shall develop a model ordinance in cooperation with local governments and other interested parties that shall allow the use of both structural and nonstructural best management practices adequate to meet the standards. The model ordinance shall be completed by 1 July 2005. In the development of the model ordinance, the Commission shall provide for options that take into consideration differences among local governments in the State, including, but not limited to, population, financial resources, and human resources.

"SECTION 10. Design Manual. — Consistent with G.S. 150B-2(8a)h., the Division, in consultation with the Division of Land Resources of the Department, the Division of Soil and Water Conservation of the Department, and North Carolina State University, shall develop or revise a design manual to provide assistance in determining which controls are best suited to the unique characteristics of the permittee, including, but not limited to, hydrology, topography, climate, soils, and receiving waters. The development or revision of the design manual shall be completed by 1 July 2005.

"SECTION 11. Federal and State Development or Redevelopment Projects. — A federal or State agency may apply to the Commission for a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to all of the activities of the agency or that applies to a particular development or redevelopment project. The Commission shall have exclusive jurisdiction to establish stormwater management requirements with respect to a particular project that is not under the jurisdiction of a federal or State agency that holds a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to all of the activities of the agency or that applies to the particular development or redevelopment project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular development or redevelopment project, then the project is subject to the stormwater management requirements of this act as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this act.

"SECTION 12. Definitions. — The following definitions apply to this act and its implementation:

"(1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).

"(2) The definitions set out in G.S. 143-212 and G.S. 143-213.

"(3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).

"(4) '1-year, 24-hour storm' means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on

average, once in 12 months and with a duration of 24 hours.

"(5) 'Built-upon area' means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. 'Built-upon area' does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

"(6) 'Division' means the Division of Water Quality in the Department.

"(7) 'Planning jurisdiction' means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.

"(8) 'Public entity' means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

"(9) 'Redevelopment' means any rebuilding activity other than are building activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

"(10) 'Regulated coverage area' means an unincorporated area of a county to which the Stormwater Management Rule applies.

"(11) 'Regulated entity' means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

"(12) 'Sensitive receiving waters' means any of the following:

"a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures).

"b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.

"c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.

"(13) 'Significant contributor of pollutants' means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

"(14) 'Stormwater Management Rule' means Section 10 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002, except that:

"a. In subsection (a), the words 'pursuant to Sub-Item (7)(a)(v) of this Rule.' are deleted and replaced by the words 'set out in 40 Code of Federal Regulations § 122.34(b)(5)(1 July 2003 Edition).'.

"b. Subsections (c) and (d) are deleted.

"c. In the first sentence of subsection (e), the words 'meets the following requirements:' is deleted and replaced by the words 'manages stormwater and protects water quality. The program shall equal or exceed the stormwater management and water quality protection provided by the following model practices:'.

"d. In subdivision (i) of subsection (e), the words 'Sub-Item (10)(B)' are deleted and replaced by the words 'Sub-Item (10)(b)'.

"e. In subdivision (i) of subsection (h), the words 'while still meeting the requirements of Sub-Item (10)(d) of this Rule' are deleted.

"f. In subsection (i), the words 'temperature, while still meeting the requirements of Sub-Item (10)(d) of this Rule.' are deleted and replaced by the word 'temperature.'

"g. In subdivision (i) of subsection (j), the words 'while still meeting the requirements of Sub-Item (10)(d) of this Rule' are deleted.

"h. In subsection (k), the words 'of Item (10)' are deleted.

"i. A new subsection (n) is added to read: '(n) A regulated entity may develop its own comprehensive watershed plan, may use the model ordinance developed by the Commission, may design its own postconstruction practices based on the Department's guidance and engineering standards for best management practices (BMPs), or it may incorporate the postconstruction model practices set out in this rule to fulfill the mini-

mum requirements set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).'.

"(15) 'Total maximum daily load (TMDL) implementation plan' means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

"SECTION 13. Construction of Act. —

"(1) Nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government to adopt stormwater management requirements that exceed the requirements of this act.

"(2) This act shall not be construed to affect pending litigation.

"(3) Except as specifically provided in this act, this act shall not be construed to give effect to any temporary or permanent rule related to Phase II stormwater management that has not become effective as provided in G.S. 150B-21.3.

"(4) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this act.

"(5) This act shall not be construed to affect any vested right to development under any provision of statutory or common law. To the extent that postconstruction measures are implemented by a zoning ordinance, vested rights shall be determined as provided in G.S. 160A-385.1, G.S. 153A-344.1, and other applicable provisions of statutory and common law. To the extent that postconstruction measures are implemented by means other than a zoning ordinance, vested rights shall be determined as provided by applicable statutory and common law. The Commission, the Department, local governments, and other public entities shall implement this act in compliance with the applicable vested rights provisions of statutory and common law.

"(6) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department."

Text of Stormwater Management Rule, As Defined in Section 12 of Session Laws 2004-163. — "(10) Post-construction stormwater management. —

"(a) All regulated public entities, required to implement the postconstruction stormwater management minimum measure, must develop, implement and adopt by ordinance a postconstruction stormwater management program for all new development and redevelopment as part of their plan to meet the minimum requirements set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition). These ordinances, and subsequent modifications, will be reviewed and approved by the Department prior to implementation. The approval process will establish subsequent timeframes when the Department will review performance under the ordinance(s). The reviews will occur, at a minimum, every five years. Regulated public entities without ordinance making powers, shall demonstrate similar actions taken in their postconstruction stormwater management program to meet the minimum measure requirements.

"(b) The postconstruction program shall apply to all new development projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale. The postconstruction program shall apply to all redevelopment projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale.

"(e) A postconstruction stormwater management program shall be developed and implemented that manages stormwater and protects water quality. The program shall equal or exceed the stormwater management and water quality protection provided by the following model practices:

"(i) The program shall require all projects as defined in Sub-Item (10)(b) of this Rule to apply for locally issued permit coverage under one of the following stormwater management options:

"(A) Low Density Projects. Projects shall be permitted as low density if the project meets the following:

"(I) No more than 2 dwelling units per acre or 24 percent built-upon area BUA for all residential and non-residential development;

"(II) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable;

"(III) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not

present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a); and

"(IV) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans.

"(B) High Density Projects. Projects exceeding the low density threshold established in Sub-Item (10)(e)(i)(A) of this Rule shall implement stormwater control measures that:

"(I) Control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for the 1 year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;

"(II) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have an 85% average annual removal for Total Suspended Solids;

"(III) General Engineering Design Criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c);

"(IV) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a); and

"(V) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans;

"(f) The program shall include an operation and maintenance component that ensures the adequate long-term operation of the structural BMP's required by the program. The program shall include a requirement that the owner of a permitted structural BMP, submit annually to the local program, a maintenance inspection report on each structural BMP. The inspection must be conducted by a qualified professional; and

"(g) A program shall be developed to control, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department.

"(h) For programs with development/redevelopment draining to SA waters, the following additional requirements must be incorporated into their program:

"(i) A local ordinance shall be developed, adopted and implemented to ensure that the best practice for reducing fecal coliform loading is selected. The best practice shall be the practice that results in the highest degree of fecal die off and controls to the maximum extent practicable sources of fecal coliform. The local ordinance(s) shall incorporate a program to control the sources of fecal coliform to the maximum extent practical, including:

"(A) Implementation of a pet waste management program. Appropriate revisions to an existing litter ordinance can be used to meet this requirement; and

"(B) Implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department; and

"(ii) New direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any constructed stormwater conveyance system, or constructed system of conveyances that discharge to SA waters, shall not be allowed. Expansion is defined as an increase in drainage area or an increase in impervious surface within the drainage area resulting in a net increase in peak flow or volume from the 1 year 24 hour storm. Overland sheetflow of stormwater or stormwater discharge to a wetland, vegetated buffer or other natural area capable of providing treatment or absorption will not be considered a direct point of stormwater discharge for the purposes of this Rule.

"(i) For programs with development/redevelopment draining to trout (Tr) waters, the following additional requirements must be incorporated into their program: A local ordinance shall be developed, adopted and implemented to ensure that the best management practices selected do not result in a sustained increase in the receiving water temperature.

"(j) For programs with development/redevelopment draining to Nutrient Sensitive waters, the following additional requirements must be incorporated into their program:

"(i) A local ordinance shall be developed, adopted and implemented to ensure that the best management practice for reducing nutrient loading is selected. Where a Department approved NSW Urban Stormwater Management Program is in place, the provisions of that program fulfill this requirement; and

"(ii) A nutrient application (both inorganic fertilizer and organic nutrients) management program shall be developed and included in the stormwater management program.

"(k) Public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of this Rule.

"(*l*) The department may require more stringent stormwater management measures on a case-by-case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

"(m) The Department may develop guidance on the scientific and engineering standards for best management practices that shall be used to meet the post construction elements of this Rule. Alternative design criteria may be approved by the Department where a demonstration is made that the alternative design will provide:

"(i) Equal or better management of the stormwater;

"(ii) Equal or better protection of the waters of the state; and

"(iii) No increased potential for nuisance conditions.

"(n) A regulated entity may develop its own comprehensive watershed plan, may use the model ordinance developed by the Commission, may design its own postconstruction practices based on the Department's guidance and engineering standards for best management practices (BMPs), or it may incorporate the postconstruction model practices set out in this rule to fulfill the minimum requirements set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition)."

Section 6 of the Temporary Phase II Stormwater Management Rules Adopted by the Environmental Management Commission on 10 October 2002. — "(6) Application schedule. Regulated public entities must submit applications on department approved forms. Designated small MS4 applications shall include program descriptions for the minimum measures identified in Item (7) of this Rule. The application for regulated public entities that do not own or operate a small MS4 shall certify the lack of ownership or operation of a small MS4. Regulated public entities that do not own or operate a small MS4 may elect to implement a stormwater management program pursuant the options available in this Rule.

"(a) The application deadline will not be less than 18 months from the date of designation notification, except for:

"(i) 1990 Decennial Census regulated public entities, which must apply by March 10, 2003.

"(ii) Municipally operated industrial activities, which must apply by March 10, 2003.

"(b) Regulated public entities that are newly identified based upon the 2000 Decennial Census, or a future decennial census, must apply for permit coverage within 18 months of State notification. The Department, within 3 months of federal verification of decennial census data, will notify in writing all the public entities identified."

Effect of Amendments. — Session Laws 2004-124, s. 6.29(a), effective January 1, 2005, and applicable only to a retail merchant that first opens a retail premises for business on or after that date or that submits an application for a building permit for the construction or renovation of a retail premises after that date, added subsection (d1).

§ 143-214.11. Wetlands Restoration Program: compensatory mitigation.

(a) Definition. — For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. — All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. — The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Wetlands Restoration Program.

(d) Compensatory Mitigation Options Available to Applicant. — An applicant may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United State Army Corps of Engineers:

(1) Payment of a fee established by the Department into the Wetlands Restoration Fund established in G.S. 143-214.12.

(2) Donation of land to the Wetlands Restoration Program or to other public or private nonprofit conservation organizations as approved by the Department.

(3) Participation in a private wetlands mitigation bank.

(4) Preparing and implementing a wetlands restoration plan.

(e) Payment Schedule. — A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.

(f) Mitigation Banks. — State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. — A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-443, s. 11A.119(a); 2004-188, s. 2.)

Effect of Amendments. — Session Laws 2004-188, s. 2, effective August 17, 2004, added subsection (g).

§ 143-214.12. Wetlands Restoration Program: Wetlands Restoration Fund.

(a) Wetlands Restoration Fund. — The Wetlands Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Wetlands Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the Wetlands Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the Wetlands Restoration Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. — A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344, may contribute to the Wetlands Restoration Program, to comply with conditions to, or terms of, the permit or authorization, if participation in the Wetlands Restoration Program will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the Wetlands Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. — The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment. (1996, 2nd Ex. Sess., c. 18, s. 27.4(a); 1997-496, s. 13; 1999-329, s. 6.1; 2004-188, s. 3.)

Effect of Amendments. — Session Laws 2004-188, s. 3, effective August 17, 2004, added the last sentence in subsection (a).

§ 143-214.25. Expired.

Editor's Note. — Session Laws 2001-404, s. 4, made this section effective September 6, 2001, and provided that it expired on September 1, 2004.

§ 143-215.1. Control of sources of water pollution; permits required.

(a) Activities for Which Permits Required. — No person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:

(1) Make any outlets into the waters of the State.

(2) Construct or operate any sewer system, treatment works, or disposal system within the State.

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.

(5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.

(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the

Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Health Services pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(b) Commission's Power as to Permits. —

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more

individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
   1. The environmental impact of the activities;
   2. How often the activities are carried out;
   3. The need for individual permit oversight; and
   4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:
   1. Performance conditions may be established by rule; and
   2. Individual or general permits are not required.

(5) The Commission shall not issue a permit for a new municipal or domestic wastewater treatment works that would discharge to the surface waters of the State or for the expansion of an existing municipal or domestic wastewater treatment works that would discharge to the surface waters of the State unless the applicant for the permit demonstrates to the satisfaction of the Commission that:

a. The applicant has prepared and considered an engineering, environmental, and fiscal analysis of alternatives to the proposed facility.

b. The applicant is in compliance with the applicable requirements of the systemwide municipal and domestic wastewater collection systems permit program adopted by the Commission.

(b1) Repealed by Session Laws 1991, c. 156, s. 1.

(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. —

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the

Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An

applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision.

(c1) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission shall not discharge more than an average annual mass load of total nitrogen than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total nitrogen concentration of five and one-half milligrams of nitrogen per liter (5.5 mg/l). The total nitrogen concentration of 5.5 mg/l for nutrient sensitive waters required by this subsection applies only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission where phosphorus is designated by the Commission as a nutrient of concern shall not discharge more than an average annual mass load of total phosphorus than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total phosphorus concentration of two milligrams of phosphorus per liter (2.0 mg/l). The total phosphorus concentration of 2.0 mg/l for nutrient sensitive waters required by this subsection applies only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c3) A person to whom subsection (c1) or (c2) of this section applies may meet the limits established under those subsections either individually or on the basis of a cooperative agreement with other persons who hold individual wastewater permits if the cooperative agreement is approved by the Commission. A person to whom subsection (c1) or (c2) of this section applies whose agreement to accept wastewater from another wastewater treatment facility that discharges into the same water body and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the average annual mass load of total nitrogen and total phosphorus that person discharges by the average annual mass load of total nitrogen and total phosphorus of the wastewater treatment facility that is eliminated. If the wastewater treatment facility that is eliminated has a permitted flow of less

than 500,000 gallons per day, the average annual mass load of total nitrogen or phosphorus shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and phosphorus discharge monitoring requirements established by the Commission. This average annual load of nitrogen or phosphorus shall be assigned to the wastewater discharge allocation of the wastewater treatment facility that accepts the wastewater.

(c4) A person to whom subsection (c1) of this section applies may request the Commission to approve a total nitrogen concentration greater than that set out in subsection (c1) of this section at a decreased permitted flow so long as the average annual mass load of total nitrogen is equal to or is less than that required under subsection (c1) of this section. A person to whom subsection (c2) of this section applies may request the Commission to approve a total phosphorus concentration greater than that set out in subsection (c2) of this section at a decreased permitted flow so long as the average annual mass load of total phosphorus is equal to or is less than that required under subsection (c2) of this section. If, after any 12-month period following approval of a greater concentration at a decreased permitted flow, the Commission finds that the greater concentration at a decreased permitted flow does not result in an average annual mass load of total nitrogen or total phosphorus equal to or less than those that would be achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its approval of the greater concentration at a decreased permitted flow and the requirements of subsections (c1) and (c2) of this section shall apply.

(c5) For surface waters to which the limits set out in subsection (c1) or (c2) of this section apply and for which a calibrated nutrient response model that meets the requirements of this subsection has been approved by the Commission, mass load limits for total nitrogen or total phosphorus shall be based on the results of the nutrient response model. A calibrated nutrient response model shall be developed and maintained with current data, be capable of predicting the impact of nitrogen or phosphorus in the surface waters, and incorporated into nutrient management plans by the Commission. The maximum mass load for total nitrogen or total phosphorus established by the Commission shall be substantiated by the model and may require individual discharges to be limited at concentrations that are different than those set out in subsection (c1) or (c2) of this section. A calibrated nutrient response model shall be developed by the Department in conjunction with the affected parties and is subject to approval by the Commission.

(c6) For surface waters that the Commission classifies as nutrient sensitive waters (NSW) on or after 1 July 1997, the Commission shall establish a date by which facilities that were placed into operation prior to the date on which the surface waters are classified NSW or for which an authorization to construct was issued prior to the date on which the surface waters are classified NSW must comply with subsections (c1) and (c2) of this section. The Commission shall establish the compliance date at the time of the classification. The Commission shall not establish a compliance date that is more than five years after the date of the classification. The Commission may extend the compliance date as provided in G.S. 143-215.1B. A request to extend a compliance date shall be submitted within 120 days of the date on which the Commission reclassifies a surface water body as NSW.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, Land Application of Waste, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. —

(1) All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems, and for land application of waste, or treatment works which do not

discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. Permits and renewals issued in approving such facilities pursuant to this subsection shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.

(2) An applicant for a permit to dispose of petroleum contaminated soil by land application shall give written notice that he intends to apply for such a permit to each city and county government having jurisdiction over any part of the land on which disposal is proposed to occur. The Commission shall not accept such a permit application unless it is accompanied by a copy of the notice and evidence that the notice was sent to each such government by certified mail, return receipt requested. The Commission may consider, in determining whether to issue the permit, the comments submitted by local governments.

(d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof) for the operation of a treatment works for a private multi-family or single family residential development, in which the owners of individual residential units are required to organize as a lawfully constituted and incorporated homeowners' association of a subdivision, condominium, planned unit development, or townhouse complex, shall be required to enter into an operational agreement with the Commission as a condition of any such permit granted. The agreement shall address, as necessary, construction, operation, maintenance, assurance of financial solvency, transfers of ownership and abandonment of the plant, systems, or works, and shall be modified as necessary to reflect any changed condition at the treatment plant or in the development. Where the Commission finds appropriate, it may require any other private residential subdivision, condominium, planned unit development or townhouse complex which is served by a private treatment works and does not have a lawfully constituted and incorporated homeowners' association, and for which an applicant applies for a permit or the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners' association, and after such incorporation, to enter into an operational agreement with the Commission and the applicant as a condition of any permit granted under subsections (c) or (d). The local government unit or units having jurisdiction over the development shall receive notice of the application within an established comment period and prior to final decision.

(e) Administrative Review. — A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision is final and is not subject to review.

(f) Local Permit Programs for Sewer Extension. — Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of

municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service is already being provided by the municipality to the permit applicant or connection to the municipal sewer system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program that:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this Part;
(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the Commission;
(3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this State;
(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process;
(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program;
(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;
(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer system; and
(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

Notwithstanding any other provision of this subsection, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the discharge of waste and pollutants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection

shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.

(h) Each applicant for a new permit or the modification of an existing permit issued under subsection (c) of this section shall include with the application: (i) the extent to which the new or modified facility is constructed in whole or in part with funds provided or administered by the State or a unit of local government, (ii) the impact of the facility on water quality, and (iii) whether there are cost-effective alternative technologies that will achieve greater protection of water quality. The Commission shall prepare a quarterly summary and analysis of the information provided by applicants pursuant to this subsection. The Commission shall submit the summary and analysis required by this subsection to the Environmental Review Commission (ERC) as a part of each quarterly report that the Commission is required to make to the ERC under G.S. 143B-282(b). (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23; 1975, c. 19, s. 51; c. 583, ss. 2-4; c. 655, ss. 1, 2; 1977, c. 771, s. 4; 1979, c. 633, s. 5; 1985, c. 446, s. 1; c. 697, s. 2; 1985 (Reg. Sess., 1986), c. 1023, ss. 1-5; 1987, c. 461, s. 1; c. 734, s. 1; c. 827, ss. 154, 159; 1989, c. 51, s. 2; c. 168, s. 29; c. 453, ss. 1, 2; c. 494, s. 1; c. 727, ss. 160, 161; 1989 (Reg. Sess., 1990), c. 1004, s. 17; c. 1024, s. 33; c. 1037, s. 1; 1991, c. 156, s. 1; c. 498, s. 1; 1991 (Reg. Sess., 1992), c. 944, s. 12; 1995 (Reg. Sess., 1996), c. 626, s. 2; 1997-458, ss. 6.1, 9.1, 11.2; 1997-496, s. 3; 1998-212, s. 14.9H(b), (d); 1999-329, s. 10.1; 2004-195, s. 1.5.)

Editor's Note. —

Session Laws 2004-176, s. 6, provides:

"(1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.

"(2) This act shall not be construed to affect the provisions of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.

"(3) This act shall not be construed to affect any federal permit requirement that was in effect on or before the date this act becomes effective."

Effect of Amendments. — Session Laws 2004-195, s. 1.5, effective August 17, 2004, corrected the spelling of "phosphorus" throughout subsections (c2), (c3), (c4), and (c5).

CASE NOTES

Illustrative Cases. — Trial court did not err in setting aside two penalties for violating notice requirements of the hog facility owner's permit, because those two events, regarding problems with the waste management system, did not occur during the time period of the illegal discharges, and did not cause an emergency action plan to be initiated; the trial court erred in failing to uphold all eight violations for the consecutive days of the illegal discharges and holding the facility owner committed only one violation. Murphy Family Farms v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 338, 585 S.E.2d 446, 2003 N.C. App. LEXIS 1793 (2003), cert. granted, 358 N.C. 155, 592 S.E.2d 690 (2004).

Permit Types. —

Appellate court remanded the trial court's judgment that the Director of the North Carolina Division of Water Quality acted lawfully when he excluded certain wood chip mills from coverage under a storm water general permit because the record did not show that the trial court applied the proper standard of review. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

Review of Agency Decision. — Although a trial court properly reviewed, under G.S. 150B-51(b)(5), a final agency decision of a contested case petition filed pursuant to G.S. 150B-23, the trial court incorrectly applied the standard of review by making its own findings of fact on unappealed issues; the trial court also erred in permanently restraining the imposition of a civil penalty assessed pursuant to G.S. 143-215.1(a)(6). Town of Wallace v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 49, 584 S.E.2d 809, 2003 N.C. App. LEXIS 1673 (2003).

Applied in N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 357 N.C. 640, 588 S.E.2d 880, 2003 N.C. LEXIS 1413 (2003).

§ 143-215.1B. Extension of date for compliance with nitrogen and phosphorus discharge limits.

(a) The Commission may extend a compliance date established under G.S. 143-215.1(c6) only in accordance with the requirements of this section and only upon the request of a person who holds a permit under G.S. 143-215.1 that authorizes a discharge into surface waters to which the limits set out in subsections (c1) or (c2) of G.S. 143-215.1 apply. The Commission shall act on a request for an extension of a compliance date within 120 days after the Commission receives the request. The Commission shall not extend a compliance date if the Commission concludes, on the basis of the scientific data available to the Commission at the time of the request, that the extension will result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition). The Commission shall not extend a compliance date unless the Commission finds that the permit holder needs additional time to develop a calibrated nutrient response model that meets the requirements of this section. If the Commission requires an individual discharge to be limited to a maximum mass load or concentration that is different from those set out in subsections (c1) or (c2) of G.S. 143-215.1, the maximum mass load or concentration shall be substantiated by the model.

(b) The Commission shall determine the extended compliance date by adding to the date on which the Commission grants the extension: (i) two years for the collection of data needed to prepare a calibrated nutrient response model; (ii) a maximum of one year to prepare the calibrated nutrient response model; (iii) the amount of time, if any, that is required for the Commission to develop a nutrient management strategy and to adopt rules or to modify discharge permits to establish maximum mass loads or concentration limits based on the calibrated nutrient response model; and (iv) a maximum of three years to plan, design, finance, and construct a facility that will comply with those maximum mass loads and concentration limits. If the Commission finds that additional time is needed to complete the construction of a facility, the Commission may further extend an extended compliance date by a maximum of two additional years.

(c) Notwithstanding the provisions of G.S. 150B-21.1(a), the Commission may adopt temporary rules to establish maximum mass loads or concentration limits pursuant to this section or as may otherwise be necessary to implement this section.

(d) A permit holder who is granted an extended compliance date under this section shall:

(1) Develop a calibrated nutrient response model in conjunction with other affected parties and in accordance with a timetable for the development of the model that has been approved by the Commission. The model shall be based on current data, capable of predicting the impact of nitrogen and phosphorus in the surface waters, capable of being incorporated into any nutrient management plan developed by the Commission, and approved by the Commission.

(2) Evaluate and optimize the operation of all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section in order to reduce nutrient loading.

(3) Evaluate methods to reduce the total mass load of waste that is discharged from all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section and determine whether these methods are cost-effective.

(4) Evaluate methods to reduce the discharge of treated effluent from all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section; including land application of treated effluent, the use of restored or created wetlands that are not located in a 100-year floodplain to polish treated effluent, and other methods to reuse treated effluent; and determine whether these methods are cost-effective.

(5) Report to the Commission on progress in the development of the calibrated nutrient response model, on efforts to optimize the operation of facilities, on the evaluation of methods of reducing the total mass load of waste, and on the evaluation of methods to reduce the discharge of treated effluent. The Commission shall establish a schedule for reports that requires the permit holder to report on at least a semiannual basis.

(e) The Commission may revoke an extension granted under this section and impose the limits set out in subsections (c1) and (c2) of G.S. 143-215.1 if the Commission determines that a permit holder who has obtained an extension under this section has, at any time during the period of the extension:

(1) Failed to comply with the requirements of subsection (d) of this section; or

(2) Violated any conditions or limitations of any permit issued under G.S. 143-215.1 or special order issued under G.S. 143-215.2 if the violation is the result of conduct by the permit holder that results in a significant violation of water quality standards. (1998-212, s. 14.9H(c); 2004-195, s. 1.6.)

Effect of Amendments. — Session Laws 2004-195, s. 1.6, effective August 17, 2004, corrected the spelling of "phosphorus" in the section heading and in subdivision (d)(1).

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

CASE NOTES

Investigative and Enforcement Costs. — Where the hog facility owner committed several violations regarding the discharge of hog waste, the trial court erred in reducing the investigative and enforcement costs assessed by the Environmental Management Commission, commensurate with the reduction in the amount of penalties assessed, as there was no authority for such an approach in G.S. 143-215.3(a)(9). Murphy Family Farms v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 338, 585 S.E.2d 446, 2003 N.C. App. LEXIS 1793 (2003), cert. granted, 358 N.C. 155, 592 S.E.2d 690 (2004).

National Pollutant Discharge Elimination System Committee of the North Carolina Environmental Management Commission had the power to review an administrative law judge's decision finding that the Director of the North Carolina Division of Water Quality exceeded his authority when he excluded certain wood chip mills from coverage under a storm water general permit. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

Cited in N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

§ 143-215.3D. Fee schedule for water quality permits.

Expand Express Review Pilot Program — Session Laws 2004-124, ss. 12.9.(a)-(f), provides: "(a) The Department of Environment and Natural Resources shall continue the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 that was implemented in the Wilmington and Raleigh regional offices and shall expand the Express Review Pilot Program to two additional regional offices within the Department, to be selected by the Department based on the Department's determination of where the Pilot Program is most needed.

"(b) The Department of Environment and Natural Resources shall continue and support the eight positions that were authorized under Section 11.4A of S.L. 2003-284 to administer the expanded Express Review Pilot Program under this section. This expanded Program and these positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(c) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support may be funded for the 2004-2005 fiscal year from funds appropriated in this act to the Department of Environment and Natural Resources for this purpose. It is the intent of the General Assembly that these positions and support be funded in future fiscal years from the Express Review Fund.

"(d) The Department of Environment and Natural Resources may establish and support four additional positions to administer the expanded Express Review Pilot Program under this section. These positions and support shall be funded from the Express Review Fund, created by Section 11.4A of S.L. 2003-284.

"(e) No later than March 1, 2005, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the continued Express Pilot Review Program and whether it recommends that the Program be continued or expanded and any other findings or recommendations, including any legislative proposals, that it deems pertinent.

"(f) Subsection (c) of this section becomes effective January 1, 2005. The remaining subsections of this section become effective July 1, 2004."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-215.6A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.

(5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

(6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).

(7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.

(8) Violates the offenses set out in G.S. 143-215.6B.

(9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22I, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.

(10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

(11) Violates or fails to act in accordance with G.S. 143-214.7(d1).

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues, unless otherwise stipulated.

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars ($10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) As used in this subsection, "municipality" refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, "unit of local government" has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved to administer and enforce pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received. (1951, c. 606; 1967, c. 892, s. 1; 1973, c.

698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 951, s. 1; c. 1036, s. 3; c. 1045, s. 1; c. 1075, s. 6; 1991, c. 579, s. 2; c. 725, s. 3; 1993, c. 348, s. 2; 1995 (Reg. Sess., 1996), c. 743, s. 14; 1997-458, s. 6.2; 1998-215, s. 63; 1999-329, ss. 5.1, 5.3, 5.5, 5.7; 2004-124, s. 6.29(b).)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-176, s. 5, provides: "The Commission shall consider the factors set out in G.S. 143B-282.1 in any decision as to whether to assess a civil penalty for failure to obtain a permit pursuant to G.S. 143-215.6A(2) against the owner or operator of a dry litter poultry facility that becomes subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) between 12 April 2003 and 1 January 2005. In determining whether the violation was willful or intentional, the Commission shall consider whether the facility developed an animal waste management plan pursuant to G.S. 143-215.10C(f) based on available guidance on phosphorus and whether the facility complied with its animal waste management plan."

Effect of Amendments. — Session Laws 2004-124, s. 6.29(b), effective January 1, 2005, and applicable only to a retail merchant that first opens a retail premises for business on or after that date or that submits an application for a building permit for the construction or renovation of a retail premises after that date, added subdivision (a)(11).

CASE NOTES

Action for Damages for Willful or Negligent Discharge. —

Because the hog waste discharged by the facility owner continued to be intermixed with the waters of the State, the North Carolina Department of Environment and Natural Resources was entitled to assess a penalty under G.S. 143- 215.6A for each day that the violation continued, and the trial court erred in reducing the number of dissolved oxygen violations from eight to one. Murphy Family Farms v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 338, 585 S.E.2d 446, 2003 N.C. App. LEXIS 1793 (2003), cert. granted, 358 N.C. 155, 592 S.E.2d 690 (2004).

Cited in Brinkman v. Barrett Kays & Assocs., P.A., 155 N.C. App. 738, 575 S.E.2d 40, 2003 N.C. App. LEXIS 17 (2003); N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

§ 143-215.8C. Neuse River Modeling and Monitoring Project reports.

The Primary Investigator or Researcher receiving funding pursuant to Subsection 14.14(a) of S.L. 1998-212 shall provide progress reports to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on 1 January and 1 July of each year until the project or study is complete. Upon completion of the project or study, the Primary Investigator or Researcher shall provide a final report to the entities listed above. (2001-452, s. 2.5; 2004-195, s. 3.2.)

Effect of Amendments. — Session Laws 2004-195, s. 3.2, effective August 17, 2004, deleted "the Scientific Advisory Council on Water Resources and Coastal Fisheries Management" preceding "and the Fiscal Research."

§ 143-215.8D. North Carolina Water Quality Workgroup; Rivernet.

(a) The Department of Environment and Natural Resources and North Carolina State University shall jointly establish the North Carolina Water Quality Workgroup. The Workgroup shall work collaboratively with the

appropriate divisions of the Department of Environment and Natural Resources and North Carolina State University, the Environmental Management Commission, and the Environmental Review Commission to identify the scientific and State agency databases that can be used to formulate public policy regarding the State's water quality, evaluate those databases to determine the information gaps in those databases, and establish the priorities for obtaining the information lacking in those databases. The Workgroup shall have the following duties:

(1) To address specifically the ongoing need of evaluation, synthesis, and presentation of current scientific knowledge that can be used to formulate public policy on water quality issues.

(2) To identify knowledge gaps in the current understanding of water quality problems and fill these gaps with appropriate research projects.

(3) To maintain a web-based water quality data distribution site.

(4) To organize and evaluate existing scientific and State agency water quality databases.

(5) To prioritize recognized knowledge gaps in water quality issues for immediate funding.

(b) The North Carolina Water Quality Workgroup shall be composed of no more than 15 members. Those members shall be jointly appointed by the Chancellor of North Carolina State University and the Secretary of Environment and Natural Resources. Any person appointed as a member of the Workgroup shall be knowledgeable in one of the following areas:

(1) Water Quality Assessment, Water Quality Monitoring, and Water Quality Permitting.

(2) Nutrient Management.

(3) Water Pollution Control.

(4) Waste Management.

(5) Groundwater Resources.

(6) Stream Hydrology.

(7) Aquatic Biology.

(8) Environmental Education and Web-Based Data Dissemination.

(c) North Carolina State University shall provide meeting facilities for the North Carolina Water Quality Workgroup as requested by the Chair.

(d) The members of the North Carolina Water Quality Workgroup shall elect a Chair. The Chair shall call meetings of the Workgroup and set the meeting agenda.

(e) The Chair of the North Carolina Water Quality Workgroup shall report each year by January 30 to the Environmental Review Commission, to the Cochairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and to the Chancellor of North Carolina State University or the Chancellor's designee on the previous year's activities, findings, and recommendations of the North Carolina Water Quality Workgroup.

(f) The North Carolina Water Quality Workgroup shall develop a water quality monitoring system to be known as Rivernet that effectively uses the combined resources of North Carolina State University and State agencies. The Rivernet system shall be designed to implement advances in monitoring technology and information management systems with web-based data dissemination in the waters that are impaired based on the criteria of the State's basinwide water quality management plans. Water quality and nutrient parameters shall be continuously monitored at each station, and the data shall be sent back to a centralized computer server.

The Rivernet system shall be coordinated with related data collection and monitoring activities of the Department of Environment and Natural Re-

sources, the Water Resources Research Institute, the North Carolina Water Quality Workgroup, and other research efforts pursued by academic institutions or State government entities. If the North Carolina Water Quality Workgroup chooses to employ a technology for which there are testing procedure guidelines promulgated by the United States Environmental Protection Agency, the American Public Health Association, the American Water Works Association, or the Water Environment Federation then the testing procedures shall comply with the appropriate guidelines. If the North Carolina Water Quality Workgroup chooses to employ a technology for which there are no testing procedure guidelines promulgated by any of the groups cited in this subsection, then the North Carolina Water Quality Workgroup may establish testing procedure guidelines.

The Rivernet system shall also have the capabilities to trigger alarms and notify the appropriate member of the Workgroup when monitoring stations exceed defined limits indicating a spill or a significant water quality or nutrient measurement event, which then can be comprehensively analyzed. (2001-424, s. 19.5; 2004-195, ss. 3.3, 3.4.)

Effect of Amendments. — Session Laws 2004-195, ss. 3.3 and 3.4, effective August 17, 2004, deleted "the Scientific Advisory Council on Water Resources and Coastal Fisheries Management" preceding "The Environmental Management" in subsection (a); and deleted "Scientific Advisory Council on Water Resources and Coastal Fisheries Management, to the" preceding "Environmental Review" in subsection (e).

Part 1A. Animal Waste Management Systems.

§ 143-215.10A. Legislative findings and intent.

Editor's Note. —

Session Laws 2004-176, s. 6, provides: "(1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.

"(2) This act shall not be construed to affect the provisions of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.

"(3) This act shall not be construed to affect any federal permit requirement that was in effect on or before the date this act becomes effective."

§ 143-215.10B. Definitions.

As used in this Part:

(1) "Animal operation" means any agricultural feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.

(2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) "Division" means the Division of Water Quality of the Department.

(5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.

(6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 27.34(b); 2001-326, s. 1; 2004-176, s. 1.)

Editor's Note. — Session Laws 2004-124, s. 12.7C, provides: "Before July 1, 2006, the requirements and qualifications for animal waste management systems technical specialists shall not be changed and the scope of the work that animal waste management systems technical specialists are authorized to perform shall not be decreased. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B."

Session Laws 2004-176, s. 4, provides: "An owner or operator of an animal operation or a dry litter poultry facility shall apply for a permit as follows:

"(1) An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall maintain continuous permit coverage and comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.

"(2) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) only after 14 April 2003, shall apply for a permit no later than 13 April 2006.

"(3) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later."

Session Laws 2004-176, s. 6, provides: "(1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.

"(2) This act shall not be construed to affect the provisions of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.

"(3) This act shall not be construed to affect any federal permit requirement that was in effect on or before the date this act becomes effective."

Effect of Amendments. — Session Laws 2004-176, s. 1, effective January 1, 2005, in subdivision (1), substituted "feedlot" for "farming" and added "or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State" at the end of the first sentence.

§ 143-215.10C. Applications and permits.

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Com-

mission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

(a1) An owner or operator of an animal waste management system for an animal operation or a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3) (1 July 2003) shall apply for an individual permit or a general permit under this Article within 90 days of notification by the Department that the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3) (1 July 2003).

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm or if required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) An animal waste management plan for an animal operation shall include all of the following components:

(1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.

(2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.

(3) Provisions that set forth acceptable methods of disposing of mortalities.

(4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

(5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be

evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

(7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.

(8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any owner or operator of a dry litter poultry facility that is not subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) but that involves 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) An animal waste management plan for a dry litter poultry facility subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall include the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this section, and to the extent required by 40 Code of Federal Regulations § 122.23 (1 July 2003) for land application discharges, subdivision (4) of subsection (e) of this section.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

(1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which

it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be required to obtain a permit under this Part and is not subject to the requirements of this Part. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1997-458, s. 9.2; 1999-329, s. 8.2; 1999-456, s. 68; 2001-254, ss. 3, 4; 2001-326, s. 2; 2004-176, s. 2.)

Editor's Note. —

Session Laws 2004-176, s. 4, provides: "An owner or operator of an animal operation or a dry litter poultry facility shall apply for a permit as follows:

"(1) An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall maintain continuous permit coverage and comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.

"(2) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) only after 14 April 2003, shall apply for a permit no later than 13 April 2006.

"(3) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later."

Session Laws 2004-176, s. 5, provides: "The Commission shall consider the factors set out in G.S. 143B-282.1 in any decision as to whether to assess a civil penalty for failure to obtain a permit pursuant to G.S. 143-215.6A(2) against the owner or operator of a dry litter poultry facility that becomes subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) between 12 April 2003 and 1 January 2005. In determining whether the violation was willful or intentional, the Commission shall consider whether the facility developed an animal waste management plan pursuant to G.S. 143-215.10C(f) based on available guidance on phosphorus and whether the facility complied with its animal waste management plan."

Session Laws 2004-176, s. 6, provides: "(1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.

"(2) This act shall not be construed to affect the provisions of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, Section 1 of S.L. 2001-254, and S.L. 2003-266.

"(3) This act shall not be construed to affect any federal permit requirement that was in

effect on or before the date this act becomes effective."

Effect of Amendments. — Session Laws 2004-176, s. 2, effective January 1, 2005, in subsection (a), inserted "or operate an animal waste management system for a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)" following "an animal operation," inserted "and dry litter poultry" following "for animal operations," and added the fifth and last sentences; inserted subsection (a1); added "or if required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm" at the end of subsection (b); in subsection (e), added "An" preceding "animal," and substituted "plan for an animal operation" for "plans"; in subdivision (e)(6), substituted "a" for "the" preceding "rate-determining," and inserted the third sentence; in subsection (f), inserted "owner or" preceding "operator" substituted "a dry litter poultry facility that is not subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) but that involves" for "an animal operation with a dry litter animal waste management system involving"; and inserted subsection (f1).

§ 143-215.10G. Fees for animal waste management systems.

(a) The Department shall charge an annual permit fee to an animal operation that is subject to a permit under G.S. 143-215.10C for an animal waste management system according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars ($50.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred fifty dollars ($150.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, three hundred dollars ($300.00).

(a1) The Department shall charge an annual permit fee to a dry litter poultry facility that is subject to a permit under G.S. 143-215.10C for an animal waste management system according to the following schedule:

(1) For a system with a permitted capacity of less than 25,000 laying chickens, less than 37,500 nonlaying chickens, or less than 16,500 turkeys, fifty dollars ($50.00).

(2) For a system with a permitted capacity of 25,000 or more but less than 200,000 laying chickens, 37,500 or more but less than 290,000 nonlaying chickens, 16,500 or more but less than 133,000 turkeys, one hundred fifty dollars ($150.00).

(3) For a system with a permitted capacity of more than 200,000 laying chickens, more than 290,000 nonlaying chickens, or more than 133,000 turkeys, three hundred dollars ($300.00).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees collected pursuant to this section to cover the costs of administering this Part. (1995 (Reg. Sess., 1996), c. 626, s. 1; 1997-496, s. 14; 1998-212, s. 29A.11(d); 2004-176, s. 3.)

Editor's Note. —

Session Laws 2004-176, s. 4, provides: "An owner or operator of an animal operation or a dry litter poultry facility shall apply for a permit as follows:

"(1) An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall maintain continuous permit coverage and comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.

"(2) An owner or operator of a dry litter

poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) only after 14 April 2003, shall apply for a permit no later than 13 April 2006.

"(3) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later."

Effect of Amendments. — Session Laws 2004-176, s. 3, effective January 1, 2005, in subsection (a), substituted "to an" for "of all," "operation" for "operations," "is" for "are," and "system" for "systems"and inserted "an" preceding "animal"; and added subsection (a1).

Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers.

§ 143-215.22J: Repealed by Session Laws 2004-195, s. 3.1, effective August 17, 2004.

§ 143-215.22K: Repealed by Session Laws 2004-195, s. 3.1, effective August 17, 2004.

Part 9. Nonpoint Source Pollution Control Program.

§ 143-215.74. Agriculture cost share program.

(a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The program shall be created, implemented, and supervised by the Soil and Water Conservation Commission.

(b) The program shall be subject to the following requirements and limitations:

(1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the water courses of the State.

(2) The program shall initially include the present 16 nutrient sensitive watershed counties and 17 additional counties.

(3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.

(4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.

(5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sedimentation control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality.

(6) Except as provided in subdivision (8) of this subsection, State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent

(25%) of the cost, which may include in-kind support of the practice, with a maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

(7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.

(8) For practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the program shall be limited to seventy-five percent (75%) of the average cost of each practice, with the remainder paid from funding from the Conservation Reserve Enhancement Program, other available federal funds, other State funds, or the assisted farmer, whose contribution may include in-kind support of the practice. This subdivision is subject to subdivision (9) of this subsection.

(9) When the applicant is either a limited-resource farmer or a beginning farmer, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. — A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

b. Limited-resource farmer. — A farmer with direct and indirect annual gross farm sales that do not exceed one hundred thousand dollars ($100,000) and with an adjusted household income in each of the previous two years that is at or below the greater of the county median household income, as determined by the United States Department of Housing and Urban Development, or two times the national poverty level based on the federal poverty guidelines established by the United States Department of Health and Human Services and revised each April 1.

c. Materially and substantially participate. —

1. In the case of an individual, for the individual, including members of the immediate family of the individual, to provide substantial day-to-day labor and management of the farm, consistent with the practices in the county in which the farm is located.

2. In the case of an entity, for all members of the entity, to participate in the operation of the farm, with some members providing management and some members providing labor and management necessary for day-to-day activities such that if the members did not provide the management and labor, the operation of the farm would be seriously impaired.

(c) The program shall be reviewed, prior to implementation, by the Committee created by G.S. 143-215.74B. The Technical Review Committee shall meet quarterly to review the progress of this program.

(d) State funds for the program shall remain available until expended for the program.

(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. This report shall include a list of projects that

received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality. (1985 (Reg. Sess., 1986), c. 1014, s. 149(a); 1987, c. 827, s. 154; c. 830, s. 102; 1995 (Reg. Sess., 1996), c. 626, ss. 9, 10; 1996, 2nd Ex. Sess., c. 18, s. 27.22(a), (b); 1997-496, s. 15; 1998-221, s. 3.1; 2002-165, s. 2.18; 2003-284, s. 11.6; 2004-124, s. 12.6.)

Editor's Note. —
Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —
Session Laws 2004-124, s. 12.6, effective July 1, 2004, rewrote subdivision (b)(9)b.

Article 21A.

Oil Pollution and Hazardous Substances Control.

Part 1. General Provisions.

§ 143-215.75. Title.

Editor's Note. — Session Laws 2004-124, s. 30.10.(b), provides: "There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources the sum of fifty-two thousand dollars ($52,000) for the 2004-2005 fiscal year to establish and support an Accounting Tech IV position to expedite the processing of claims under G.S. 143-215.94E. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to seventy-six thousand dollars ($76,000) for the 2004-2005 fiscal year as needed to cover the cost of any legislative salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes. It is the intent of the General Assembly that funds appropriated under this section are recurring funds and that these funds are in addition to funds appropriated under subsection 11.4(b) of S. L. 2003-284."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 2. Oil Discharge Controls.

§ 143-215.94. Joint and several liability.

Editor's Note. — Session Laws 2004-124, s. 30.10.(b), provides: "There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources the sum of fifty-two thousand dollars ($52,000) for the 2004-2005 fiscal year to establish and support an Accounting Tech IV position to expedite the processing of claims under G.S. 143-215.94E. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to seventy-six thousand dollars ($76,000) for the 2004-2005 fiscal year as needed to cover the cost of any legislative

salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes. It is the intent of the General Assembly that funds appropriated under this section are recurring funds and that these funds are in addition to funds appropriated under subsection 11.4(b) of S. L. 2003-284."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

Editor's Note. —

Session Laws 2004-124, s. 30.10.(b), provides: "There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources the sum of fifty-two thousand dollars ($52,000) for the 2004-2005 fiscal year to establish and support an Accounting Tech IV position to expedite the processing of claims under G.S. 143-215.94E. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to seventy-six thousand dollars ($76,000) for the 2004-2005 fiscal year as needed to cover the cost of any legislative salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes. It is the intent of the General Assembly that funds appropriated under this section are recurring funds and that these funds are in addition to funds appropriated under subsection 11.4(b) of S. L. 2003-284."

Session Laws 2004-124, s. 30.10.(f), provides: "The Environmental Review Commission and the Joint Legislative Transportation Oversight Committee shall jointly study the desirability and feasibility of altering or eliminating the role of the State of North Carolina and the Department of Environment and Natural Resources in the implementation of Part 2A of Article 21A of Chapter 143 of the General Statutes. In conducting this study, the Commission shall consider:

"(1) The requirements of applicable federal law.

"(2) What role the State should play in assisting owners and operators of underground storage tanks in meeting applicable financial responsibility requirements and the availability and adequacy of private insurance for that purpose.

"(3) The adequacy of current and projected revenue available to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund under existing law to achieve the purposes for which those funds were established.

"(4) The desirability and feasibility of privatizing the administration of Part 2A of Article 21A of Chapter 143 of the General Statutes by transferring control and direction of the Commercial Fund and the Noncommercial Fund to a private entity or, in the alternative, of abolishing or narrowing the purposes for which those funds are used.

"(5) What role the State should play in the cleanup of discharges and releases from petroleum underground storage tanks when no owner or operator can be identified or located or when the owner or operator fails to proceed with assessment or cleanup due to insolvency, inadequate resources, or other reasons.

"(6) The extent to which current regulatory oversight and inspection of underground storage tanks, including enforcement, under Part 2B of Article 21A of Chapter 143 of the General Statutes is adequate and effective in preventing discharges and releases of petroleum from underground storage tanks.

"(7) The impact of privatization and of any other options identified during the course of the study on the solvency of the Commercial Fund and the Noncommercial Fund.

"(8) The impact of privatization and of any other options identified during the course of the study, including abolishing the Commercial Fund or the Noncommercial Fund or narrowing the purposes for which those funds are used, on the cleanup of discharges and releases of petroleum to standards established by federal or State law, the long-term public health and safety, and protection of the environment."

Session Laws 2004-124, s. 30.10(g), provides:

"The Environmental Review Commission and the Joint Legislative Transportation Oversight Committee shall report their findings and recommendations as to the matters to be studied pursuant to subsection (f) of this section, including any legislative proposals, to the 2005 General Assembly no later than 31 January 2005."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-215.94E. Rights and obligations of the owner or operator.

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the

current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars ($5,000). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(d) In any case where the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies,

one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections (b), (b1), (c), and (c1) of this section. The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1). An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this subsection within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

(e1) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(e2)(1) The Department may require an owner, operator, or landowner to obtain approval from the Department before proceeding with any task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1). The Department shall specify those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. The Department shall pay or reimburse the cost of a task only if the cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) and if the Department determines that the cost is reasonable and necessary. The Commission may adopt rules governing reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall

develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a cost is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the cost.

(2) Except as provided in subdivisions (3) and (4) of this subsection, the Department shall not preapprove any task the cost of which is to be paid or reimbursed from the Commercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund to pay a claim for payment or reimbursement of the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the owner, operator, or landowner is eligible to have the claim paid under this Part. Except as provided in subdivisions and (4) of this subsection, the Department shall not preapprove any task the cost of which is to be paid or reimbursed from the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Noncommercial Fund to pay a claim for payment or reimbursement of the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the owner, operator, or landowner is eligible to have the claim paid under this Part. This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required as provided in this subsection.

(3) The Department may preapprove a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2) of this subsection if the owner, operator, or landowner specifically requests that the task be preapproved and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks that the Department has preapproved pursuant to subdivision (2) of this subsection.

(4) The Department may preapprove a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2) of this subsection if the discharge

or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are preapproved under this subdivision shall be paid or reimbursed on the same basis as tasks that are preapproved under subdivision (2) of this subsection.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94W. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, ss. 7, 16; 1991, c. 538, ss. 7, 22; 1991 (Reg. Sess., 1992), c. 817, s. 2; 1993, c. 400, s. 15; c. 402, s. 3; 1995, c. 377, s. 8; 1995 (Reg. Sess., 1996), c. 648, ss. 3, 4; 1998-161, ss. 4, 5, 8(a), (b), 11(b); 1998-215, s. 68; 2000-172, s. 7.1; 2003-352, ss. 6, 7; 2004-124, s. 30.10(d).)

Editor's Note. — Session Laws 2003-352, s. 10, as amended by Session Laws 2004-124, s. 30.10(e), provides: "The definitions set out in G.S. 143-212 and G.S. 143-215.94A apply to

this section. The rights and obligations of an owner, an operator, or a landowner to whom either G.S. 143-215.94E(b1) or G.S. 143-215.94E(c1) apply who is eligible to have costs paid or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D shall be governed by G.S. 143-215.94E as modified by this section. The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule. The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a noncommercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment or cleanup of the discharge or release from a noncommercial underground storage tank are eligible to be paid from the Noncommercial Fund, the Department shall also consider the availability of funds in the Noncommercial Fund and the order in which the discharge or release was reported in determining the schedule. The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors. The lack of availability of funds in the Commercial Fund or the Noncommercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup. If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S.143-215.84 or G.S. 143-215.94E before the owner or operator is authorized to proceed with further assessment or cleanup pursuant to the schedule set by the Department. Once the Department has determined a schedule for the assessment and cleanup of a discharge or release from a commercial underground storage tank or a noncommercial underground storage tank, an owner, operator, or other person responsible for the assessment and cleanup is not eligible to have the costs of the assessment or cleanup paid or reimbursed from the Commercial Fund or the Noncommercial Fund until such time as further assessment or cleanup is authorized by the Department pursuant to the schedule. An owner, operator, or other person may undertake further assessment or cleanup before receiving authorization from the Department. An owner, operator, or other person who undertakes further assessment or cleanup before receiving authorization from the Department shall be reimbursed only after the Department has paid or reimbursed the costs for all assessments and cleanups that the Department has authorized."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 30.10(d), effective 1 October 2004, rewrote subsection (e2).

Part 2B. Underground Storage Tank Regulation.

§ 143-215.94T. Adoption and implementation of regulatory program.

Editor's Note. —

Session Laws 2004-124, s. 30.10.(b), provides: "There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources the sum of fifty-

two thousand dollars ($52,000) for the 2004-2005 fiscal year to establish and support an Accounting Tech IV position to expedite the processing of claims under G.S. 143-215.94E. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to seventy-six thousand dollars ($76,000) for the 2004-2005 fiscal year as needed to cover the cost of any legislative salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes. It is the intent of the General Assembly that funds appropriated under this section are recurring funds and that these funds are in addition to funds appropriated under subsection 11.4(b) of S. L. 2003-284."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 6. Dry-Cleaning Solvent Cleanup.

§ 143-215.104C. (Repealed effective January 1, 2012 — See notes) Dry-Cleaning Solvent Cleanup Fund.

Editor's Note. —

Session Laws 2001-265, ss. 2(a)-(c), as amended by Session Laws 2004-48, s. 1, effective retroactively to January 1, 2000, provides: "(a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to a notice of violation or enforcement action by the Department of Environment and Natural Resources during the period beginning 1 October 1997 and ending 30 June 2001 may, on or after 30 June 2001 and prior to 1 July 2002, seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Environmental Management Commission shall reimburse costs if it finds that the costs incurred were (i) appropriately documented and reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) through (9) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a notice of violation or a specific order of the Department of Environment and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

"(b) Any person who, as of 30 June 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination may petition the Environmental Management Commission prior to 1 July 2002 to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. The Commission shall determine whether the cost of any assessment or remediation performed prior to entry into an agreement is necessary and reasonable. The Commission shall credit the costs of assessment or remediation that it determines to be necessary and reasonable, and that have been paid by the person, toward the financial responsibility requirements applicable to that person under G.S. 143-215.104F.

"(c) The total of all payments made pursuant to this section in a single fiscal year shall not exceed twenty-five percent (25%) of the revenues credited to the Dry-Cleaning Solvent Cleanup Fund in the preceding fiscal year."

§ 143-215.104F. (Repealed effective January 1, 2012 — See notes) Requirements for certification, assessment agreements, and remediation agreements.

Editor's Note. —

Session Laws 2001-265, ss. 2(a)-(c), as amended by Session Laws 2004-48, s. 1, effective retroactively to January 1, 2000, provides: "(a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamina-

tion pursuant to a notice of violation or enforcement action by the Department of Environment and Natural Resources during the period beginning 1 October 1997 and ending 30 June 2001 may, on or after 30 June 2001 and prior to 1 July 2002, seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Environmental Management Commission shall reimburse costs if it finds that the costs incurred were (i) appropriately documented and reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) through (9) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a notice of violation or a specific order of the Department of Environment and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

"(b) Any person who, as of 30 June 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination may petition the Environmental Management Commission prior to 1 July 2002 to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. The Commission shall determine whether the cost of any assessment or remediation performed prior to entry into an agreement is necessary and reasonable. The Commission shall credit the costs of assessment or remediation that it determines to be necessary and reasonable, and that have been paid by the person, toward the financial responsibility requirements applicable to that person under G.S. 143-215.104F.

"(c) The total of all payments made pursuant to this section in a single fiscal year shall not exceed twenty-five percent (25%) of the revenues credited to the Dry-Cleaning Solvent Cleanup Fund in the preceding fiscal year."

§ 143-215.104N. (Repealed effective January 1, 2012 — See notes) Reimbursement of dry-cleaning solvent assessment and remediation costs; limitations; collection of reimbursement.

Editor's Note. —

Session Laws 2001-265, ss. 2(a)-2(c), as amended by Session Laws 2004-48, s. 1, effective retroactively to January 1, 2000, provides: "(a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to a notice of violation or enforcement action by the Department of Environment and Natural Resources during the period beginning 1 October 1997 and ending 30 June 2001 may, on or after 30 June 2001 and prior to 1 July 2002, seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Environmental Management Commission shall reimburse costs if it finds that the costs incurred were (i) appropriately documented and reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) through (9) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a notice of violation or a specific order of the Department of Environment and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

"(b) Any person who, as of 30 June 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination may petition the Environmental Management Commission prior to 1 July 2002 to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. The Commission shall determine whether the cost of any assessment or remediation performed prior to entry into an agreement is necessary and reasonable. The Commission shall credit the costs of assessment or remediation that it determines to be necessary and reasonable, and that have been paid by the person, toward the financial responsibility requirements applicable to that person under G.S. 143-215.104F.

"(c) The total of all payments made pursuant to this section in a single fiscal year shall not exceed twenty-five percent (25%) of the revenues credited to the Dry-Cleaning Solvent Cleanup Fund in the preceding fiscal year."

ARTICLE 21B.

Air Pollution Control.

§ 143-215.107A. Motor vehicle emissions testing and maintenance program.

(a) General Provisions. —

(1) G.S. 143-215.107(a)(6) shall be implemented as provided in this section.

(2) Motor vehicle emissions inspections shall be performed by a person who holds an emissions inspection mechanic license issued as provided in G.S. 20-183.4A(c) at a station that holds an emissions inspection station license issued under G.S. 20-183.4A(a) or at a place of business that holds an emissions self-inspector license issued as provided in G.S. 20-183.4A(d). Motor vehicle emissions inspections may be performed by a decentralized network of test-and-repair stations as described in 40 Code of Federal Regulations § 51.353 (1 July 1998 Edition). The Commission may not require that motor vehicle emissions inspections be performed by a network of centralized or decentralized test-only stations.

(b) Repealed by Session Laws 2000, ch. 134, s. 2, effective July 14, 2000.

(c) **(Effective July 1, 2004 until January 1, 2005 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Moore, Orange, Randolph, Rockingham, Rowan, Stanly, Union, and Wake.

(c) **(Effective January 1, 2005 until July 1, 2005 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Stanly, Union, Wake, Wayne and Wilson.

(c) **(Effective July 1, 2005 until January 1, 2006 — See editor's notes)** Counties Covered. — Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Wake, Wayne, Wilkes and Wilson.

(d) Additional Counties. — The Commission may require that motor vehicle emissions inspections be performed in counties in addition to those set out in subsection (c) of this section. In determining whether to require that motor vehicle emissions inspections be performed in a county, the Commission may consider the population of, and distribution of population in, the county; the projected change in population of, and distribution of population in, the county; the number of vehicles registered in the county; the projected change in the

number of vehicles registered in the county; vehicle miles traveled in the county; the projected change in vehicle miles traveled in the county; current and projected commuting patterns in the county; and the current and projected impact of these factors on attainment of air quality standards in the county and in areas outside the county. The Commission may not require that motor vehicle emissions inspections be performed in any county with a population of less than 40,000 based on the most recent population estimates prepared by the State Budget Officer. The Commission may not require that motor vehicle emissions inspections be performed in any county in which the number of vehicle miles traveled per day is less than 900,000, based on the most recent estimates prepared by the Department of Transportation. In order to disapprove a rule that requires that motor vehicle emissions inspections be performed in one or more additional counties, a bill introduced pursuant to G.S. 150B-21.3(b) must amend subsection (c) of this section to add one or more other counties in which the total population and vehicle miles traveled per day equal or exceed the total population and vehicle miles traveled in the county or counties listed in the rule that the bill would disapprove. (1999-328, ss. 3.1, 3.3, 3.4, 3.5, 3.6, 3.7; 2000-134, ss. 2, 3; 2004-203, s. 5(l).)

Subsection (c) Set Out Three Times. — The first version of subsection (c) set out above is effective July 1, 2004 until January 1, 2005. The second version of subsection (c) set out above is effective January 1, 2005 until July 1, 2005. The third version of subsection (c) set out above is effective July 1, 2005 until January 1, 2006.

Effect of Amendments. — Session Laws 2004-203, s. 5(*l*), effective August 17, 2004, substituted "Budget Officer" for "Planning Officer" in subsection (d).

§ 143-215.107C. State agency goals, plans, duties, and reports.

(a) As used in this section, alternative-fueled vehicle means a motor vehicle capable of operating on electricity; natural gas; propane; hydrogen; reformulated gasoline; ethanol; other alcohol fuels, separately or in mixtures of eighty-five percent (85%) or more of alcohol by volume; or fuels, other than alcohol, derived from biological materials. For purposes of this section, a vehicle that has been converted to operate on a fuel other than the fuel for which it was originally designed is not a new or replacement vehicle.

(b) It shall be the goal of the State that on and after 1 January 2004 at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. The Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles. For purposes of this section, a light duty car or truck is one that is rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR).

(c) The Department of Environment and Natural Resources shall report on progress in increasing the use of alternative-fueled and low emission light duty cars and trucks in privately owned fleets to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2001.

(d) The Department of Administration, the Office of State Personnel, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by State employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The

plan shall consider the use of carpooling, vanpooling, public transportation, incentives, and other appropriate strategies. The Office of State Personnel shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(e) The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by private sector employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of incentives for both private sector employees and employers, carpooling, vanpooling, public transportation, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(f) The Office of State Personnel shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/Telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. The Office of State Personnel shall report on progress in implementing this section to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000. (1999-328, ss. 4.1, 4.2, 4.5, 4.6, 4.7, 4.8; 2004-195, s. 2.4.)

Effect of Amendments. — Session Laws 2004-195, s. 2.4, effective August 17, 2004, deleted the former third sentence of subsection (b) which read: "The Department of Administration shall report on progress in developing and implementing this plan and achieving this goal to the Environmental Review Commission on 1 September of each year beginning 1 September 2000."

§ 143-215.114A. Enforcement procedures: civil penalties.

CASE NOTES

Cited in N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Article 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.10. Components of State Nature and Historic Preserve.

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of 6 May 2003: Baldhead Island State

Natural Area, Bay Tree Lake State Park, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Natural Area, Elk Knob State Natural Area, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Hammocks Beach State Park, Jones Lake State Park, Lake James State Park, Lake Norman State Park, Lake Waccamaw State Park, Lea Island State Natural Area, Lumber River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park, Run Hill State Natural Area, Singletary Lake State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of 6 May 2003 with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of 6 May 2003 with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of 6 May 2003 with the exception of the following tracts: The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, Number Four Township, described in Deed Book 1286, Page 85, and containing 1.64 acres as shown on the drawing prepared by the Division of Parks and Recreation entitled "Property to Be Excepted Crowders Mountain State Park" dated 14 April 2003, and filed in the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State

of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of 6 May 2003.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of 6 May 2003 with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres; and the portion of that certain tract or parcel of land at Stone Mountain State Park in Alleghany County, Cherry Lane Township, described in Deed Book 219, Page 543, and more particularly described as all of the land in this parcel lying north of the new division line on the survey by Andrews and Hobson Surveyors dated August 15, 2000, and entitled "Property Exchange Agreement for State of North Carolina & the United States of America", and filed in the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of 6 May 2003: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of 6 May 2003 with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(13) All lands and waters located within the boundaries of South Mountains State Park as of 6 May 2003 with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

a. The portion of that tract or property at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 862, Page 1471, required for the right-of-way and easements for the relocation of SR 1904 within the park and lying generally between the Rutherford Electric Membership Corporation right-of-way and the southern property boundary of the park, as described in the drawing entitled "Survey for State of North Carolina", dated January 28, 1999, prepared by Suttles Surveying, P.A., bearing the preparer's file name 12455.dwg and filed in the State Property Office. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. The portion of those certain tracts or parcels of land at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 925, Page 1284, and Deed Book 870, Page 1729 required for the right-of-way and easements for the relocation of SR 1904 within the Park and shown on the drawing prepared by Suttles Surveying P.A. entitled "Survey of the Proposed Centerline of the New Road Alignment for the State of North Carolina" bearing the preparer's file name 12455D.dwg, dated 10 April 2003, and filed in the State Property Office. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

c. The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or, (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

d. The portion of that certain tract or parcel of land at South Mountains State Park in Burke County, Morganton Township, described in Deed Book 28, Page 607, Deed Book 28, Page 467, and Plat Book 3, Page 78, and containing 0.33 acres as shown on the drawing prepared by Hawkins Land Surveying entitled "Subdivision for Trustees of Walker Top Baptist Church" dated 26 September 2001, and filed with the State Property Office. The State may transfer this property to the Trustees of Walker Top Baptist Church to be used for church purposes. The instrument transferring this property shall provide that the State retains a possibility of reverter and shall provide that, in the event that the Walker Top Baptist Church ceases to use the property for church purposes, the property shall revert to the State. The State may not otherwise sell or exchange the property.

(14) Repealed by Session Laws 2003-234, s. 1, effective June 19, 2003.

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of 6 May 2003 with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of 6 May 2003. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes.

(17) All lands and waters within the Eno River State Park as of 6 May 2003 with the exception of the following tract: The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land

for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of 6 May 2003, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land. (1979, c. 498; 1989, Joint Res. 23; c. 146, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 30; 1999-268, s. 2; 2001-217, s. 2; 2002-149, s. 1; 2003-234, s. 1; 2004-25, s. 2.)

Editor's Note. —

Session Laws 2004-25, provides: "Whereas, Section 5 of Article XIV of the Constitution of North Carolina authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

"Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the Constitution of North Carolina; and

"Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

"The General Assembly of North Carolina enacts:

"SECTION 1. The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled 'Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green' sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled 'Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green' sheet 3 of 3 bearing the preparer's file name Town of Cary

Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office."

Session Laws 2004-25, s. 4, provides: "In accordance with G.S. 143-260.8(e), the Secretary of State is directed to forward a certified copy of this act to the register of deeds of each county in which any portion of the property removed from the State Nature and Historic Preserve by this actis located."

Effect of Amendments. —

Session Laws 2004-25, s. 2, effective June 25, 2004, deleted "Hemlock Bluffs State Natural Area" from subdivision (1); and added subdivision (18).

Article 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

Legal Periodicals. —

For article, "Local Governments and the Public Duty Doctrine after Wood v. Guilford," see 81 N.C.L. Rev. 2291 (2003).

CASE NOTES

I. In General.
II. Procedure.

I. IN GENERAL.

The provisions of the Tort Claims Act have been modified and superceded by the provisions of G.S. 1A-a, Rule 14(c); plaintiffs may now bring direct claims against the State in accordance with Rule 14(a) once the State has been made a third-party defendant in a tort action, and such claims do not have to be made before the North Carolina Industrial Commission. Batts v. Batts, 160 N.C. App. 554, 586 S.E.2d 550, 2003 N.C. App. LEXIS 1837 (2003), cert. denied, 358 N.C. 153, 592 S.E.2d 553 (2004).

Only Claims Against State Agencies Authorized. —

Pursuant to G.S. 143-291(a), the North Carolina State Tort Claims Act only applies to state actors, not municipal employees. Seaton v. Owens, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22298 (M.D.N.C. Dec. 8, 2003).

Under the Tort Claims Act, jurisdiction is vested in the Industrial Commission to hear claims against the State, etc.

Under the North Carolina Tort Claims Act, G.S. 143-291 et seq., jurisdiction is vested in the North Carolina Industrial Commission to hear claims against the State of North Carolina for personal injuries sustained by any person as a result of the negligence of a state employee while acting within the scope of his employment. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

North Carolina Industrial Commission Does Not Resolve Factual Issues. — In a North Carolina Tort Claims Act, G.S. 143-291 et seq., case, the North Carolina Industrial Commission's duty in addressing a summary judgment motion is limited to determining the existence of genuine issues of material fact and stops short of resolving such issues without an evidentiary hearing; as stated by the North Carolina Supreme Court, generally if a review of the record leads the appellate court to conclude that the trial tribunal was resolving material issues of fact rather than deciding whether they existed, the entry of summary judgment is held erroneous. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

Scope of Judicial Review on Appeal. — When reviewing a decision of the North Carolina Industrial Commission under the North Carolina Tort Claims Act, G.S. 143-291 et seq., following an evidentiary hearing, the appellate court addresses two questions: (1) whether competent evidence exists to support the Commission's findings of fact, and (2) whether the Commission's findings of fact justify its conclusions of law and decision; with respect to findings of fact, the existence of contrary evidence is irrelevant if there was also competent evidence to support the Commission's findings. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

Waiver of Immunity by University. — University's motion to dismiss an employee's state law claims against it pursuant to Fed. R. Civ. P. 12(b)(1) was granted because the univer-

sity, as a state agency, enjoyed the protection of Eleventh Amendment immunity from liabilities that had to be paid from public funds; therefore, because North Carolina had not explicitly waived immunity from state court proceedings with regard to torts by state employees under G.S. 143-291, the university did not waive its immunity through removal to federal court, nor did the university waive its immunity under G.S. 153A-435(a) by purchasing liability insurance since there was not a plain and unmistakable mandate from the General Assembly to waive immunity in these circumstances. Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004).

Claimant Held Free of Contributory Negligence. — North Carolina Industrial Commission did not err in holding that an injured person was not contributorily negligent in that: (1) the injured party's attention was focused on the stop sign to the right side of the tracks and that she was slowing to obey that stop sign when she was struck by a train; (2) the evidence conflicted as to whether the train issued a signal audible from 1,500 feet of the highway crossing and whether the approaching train was plainly visible to invoke G.S. 20-142.1(a)(3); (3) a passenger in another driver's car's testimony was sufficient to support the Commission's finding that the injured party had slowed down in an attempt to obey the stop sign; and (4) a field support engineer with DOT testified that the stop sign was confusing. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

North Carolina Industrial Commission erred in granting partial summary judgment to an injured party and in failing to remand the case to a deputy commissioner for an evidentiary hearing once the Commission determined that genuine issues of material fact remained as to whether the North Carolina Department of Transportation negligently erected a confusing stop sign at a railroad intersection. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

II. PROCEDURE.

Order to Compel Discovery. — North Carolina Industrial Commission acted within its authority in issuing its order compelling state facilities and their employees to comply with discovery requests in a personal injury action brought under the North Carolina Tort Claims Act, G.S. 143-291 et seq., and the requested juvenile records, social services records, and law enforcement records sought in discovery were subject to disclosure. Jane Doe 1 v. Swannanoa Valley Youth Dev. Ctr., — N.C. App. —, 592 S.E.2d 715, 2004 N.C. App. LEXIS 299 (2004).

The Industrial Commission must make findings of fact and conclusions of law, etc. North Carolina Industrial Commission's denial of a negligence claim brought by an estate co-administrator against the state transportation department following an automobile accident at a site where there was no median barrier, was reversed and the matter was remanded for additional findings of fact and further proceedings because the Commission's legal conclusions were based upon an erroneous application of the law to the facts, and were not supported by its findings of fact. Viar v. N.C. DOT, 162 N.C. App. 362, 590 S.E.2d 909, 2004 N.C. App. LEXIS 184 (2004).

§ 143-293. Appeals to Court of Appeals.

CASE NOTES

Who Has Right to Appeal. — Under G.S. 143-293, either party may appeal a decision of the North Carolina Industrial Commission. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

When reviewing the North Carolina Industrial Commission's entry of summary judgment, instead of addressing the questions which the appellate court is usually limited to pursuant to G.S. 143-293, the appellate court must determine whether the pleadings, interrogatory answers, affidavits, or other materials contained a genuine question of material fact, and whether at least one party was entitled to a judgment as a matter of law. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

§ 143-299.2. Limitation on payments by the State.

CASE NOTES

Cited in Batts v. Batts, 160 N.C. App. 554, 586 S.E.2d 550, 2003 N.C. App. LEXIS 1837 (2003), cert. denied, 358 N.C. 153, 592 S.E.2d 553 (2004).

§ 143-299.4. Payment of State excess liability.

CASE NOTES

Cited in Batts v. Batts, 160 N.C. App. 554, 586 S.E.2d 550, 2003 N.C. App. LEXIS 1837 (2003), cert. denied, 358 N.C. 153, 592 S.E.2d 553 (2004).

§ 143-300. Rules and regulations of Industrial Commission; destruction of records.

CASE NOTES

Order to Compel Discovery. — North Carolina Industrial Commission acted within its authority in issuing its order compelling state facilities and their employees to comply with discovery requests in a personal injury action brought under the North Carolina Tort Claims Act, G.S. 143-291 et seq., and the requested juvenile records, social services records, and law enforcement records sought in discovery were subject to disclosure. Moreover, the North Carolina Rules of Civil Procedure applied in tort claims before the Commission, to the extent that such rules were not inconsistent with the Tort Claims Act, and the Commission had the authority under G.S. 1A-1, N.C. R. Civ. P. 37 to enter an order compelling discovery and to impose sanctions on the party refusing to comply with the order. Jane Doe 1 v. Swannanoa Valley Youth Dev. Ctr., — N.C. App. —, 592 S.E.2d 715, 2004 N.C. App. LEXIS 299 (2004).

ARTICLE 38.

Water Resources.

§ 143-354. Ordinary powers and duties of the Commission.

Editor's Note. — Session Laws 2002-167, s. 3(a) to (c), as amended by Session Laws 2004-195, s. 4, provides: "(a) Pursuant to subdivisions (1) and (8) of G.S. 143-354(a), the Environmental Management Commission shall develop and implement rules governing water conservation and water reuse during drought and water emergency situations. The rules shall establish minimum standards and practices for water conservation and water reuse for all of the following classes of water users:

"(1) Publicly owned and privately owned water supply systems.

"(2) State agencies.

"(3) Local governments.

"(4) Business and industrial users of water.

"(5) Agricultural and horticultural users of water.

"(b) In developing the rules authorized by subsection (a) of this section, the Environmental Management Commission shall consult with representatives of water users and advocacy groups listed in subsection (a) of Section 5 of this act.

"(c) Rules adopted pursuant to subsection (a) of this section shall not supercede or modify existing rules governing water used in the generation of electricity. This section shall not be construed to authorize the Commission to adopt temporary rules. The Commission shall adopt permanent rules so that the rules will become effective following legislative review pursuant to G.S. 150B-21.3(b) by the 2006 Regular Session of the 2005 General Assembly."

§ 143-355.1. Drought Management Advisory Council; drought advisories.

(a) The Department shall establish a Drought Management Advisory Council. The purposes of the Council are:

(1) To improve coordination among local, State, and federal agencies; public water systems, as defined in G.S. 130A-313(10); and water

users to improve the management and mitigation of the harmful effects of drought.

(2) To provide consistent and accurate information to the public about drought conditions.

(b) The Department shall invite each of the following organizations to designate a representative to serve on the Council:

(1) North Carolina Cooperative Extension Service.
(2) State Climate Office at North Carolina State University.
(3) Public Staff of the Utilities Commission.
(4) Wildlife Resources Commission.
(5) Department of Agriculture and Consumer Services.
(6) Department of Commerce.
(7) Department of Crime Control and Public Safety.
(8) National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.
(9) United States Geological Survey of the United States Department of the Interior.
(10) United States Army Corps of Engineers.
(11) United States Department of Agriculture.
(12) Federal Emergency Management Agency of the United States Department of Homeland Security.

(c) The Department shall also invite other agencies and organizations that represent water users, including local governments, agriculture, agribusiness, forestry, manufacturing, and others as appropriate, to designate a representative to serve on the Council or to participate in the work of the Council with respect to particular drought related issues.

(d) The Department shall designate an employee of the Department to serve as Chair of the Council. The Council shall meet at least once in each calendar year in order to maintain appropriate agency readiness and participation. In addition, the Council shall meet on the call of the Chair to respond to drought conditions. The provisions of Article 33C of this Chapter apply to meetings of the Council.

(e) In order to provide accurate and consistent information to assist local governments and other water users in taking appropriate drought response actions, the Council may issue drought advisories that designate:

(1) Specific areas of the State in which drought conditions are impending.
(2) Specific areas of the State that are suffering from drought conditions.
(3) The level of severity of drought conditions.

(f) In making a determination of any of the drought designations described in subsection (e) of this section, the Council shall consider stream flows, ground water levels, the amount of water stored in reservoirs, weather forecasts, the time of year, and other factors that are relevant to determining the location and severity of drought conditions.

(g) The Council shall report on the implementation of this section to the Secretary, the Governor, and the Environmental Review Commission no later than 1 October of each year. The report shall include a review of drought advisories issued by the Council and any recommendations to improve coordination among local, State, and federal agencies; public water systems; and water users to improve the management and mitigation of the harmful effects of drought. (2003-387, s. 2; 2004-195, s. 2.5.)

Editor's Note. —

Session Laws 2004-195, s. 2.6, provides: "The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 2.1 of this act, to the Environmental Review Commission on or before 1 October 2005. The Drought Management Advisory Council shall submit the first report required by G.S. 143-355.1, as enacted by Section 2.5 of this act, to the Secretary of Environment and Natural Resources, the Governor, and the Environmental Review Com-

mission on or before 1 October 2005."

Effect of Amendments. — Session Laws 2004-195, s. 2.5, effective August 17, 2004, added subsection (g).

Article 49A.

Equal Employment Practices.

§ 143-422.1. Short title.

CASE NOTES

Private Right of Action. —

Plaintiff's wrongful discharge claim failed as a matter of law, because North Carolina did not recognize plaintiff's tort claims under the North Carolina Equal Employment Practices Act, G.S. 143-422.1 et seq., for wrongful constructive discharge or wrongful discharge in retaliation for complaints of sexual harassment. Lowe v. Unifi, Inc., 292 F. Supp. 2d 773, 2003 U.S. Dist. LEXIS 20887 (M.D.N.C. 2003).

Plaintiff in Federal Age Discrimination Suit Need Not Seek Relief from Human Relations Council (now Commission) as Jurisdictional Prerequisite. —

In an action in which former employees filed suit against their former employer pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., and the North Carolina Equal Employment Practices Act (NCEEPA), G.S. 143-422.1 et seq., the employer was granted summary judgment on the employees' NCEEPA claims; North Carolina courts and federal courts applying North Carolina law have found repeatedly that no private cause of action exists for retaliation, hostile work environment, disparate treatment, or constructive discharge in violation of public policy. Swann v. Roadway Express, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 9448 (M.D.N.C. May 14, 2004).

§ 143-422.2. Legislative declaration.

CASE NOTES

Relationship to Federal Law. —

Insurance investigator's wrongful-discharge claim on the basis of age under North Carolina law failed because his claim had failed under the identical standards of the Age Discrimination in Employment Act (ADEA), 29 U.S.C.S. §§ 621-634. Rishel v. Nationwide Mut. Ins. Co., 297 F. Supp. 2d 854, 2003 U.S. Dist. LEXIS 23463 (M.D.N.C. 2003).

Retaliation. —

Court granted defendant employer's motion to dismiss under Fed. R. Civ. P. 12(b)(6) in plaintiff employee's retaliatory discharge suit against the employer, under 42 U.S.C.S § 2000e-3 of Title VII of the Civil Rights Act of 1964 (Title VII) and G.S. 143-422.2 of the North Carolina Equal Employment Protection Act (Act), G.S. 143-422.1 to 143-422.3 (using the Title VII framework in analyzing claims under the Act), as, inter alia, the employee's failure to pay costs taxed against the employee in a prior Title VII suit against the employer was not participation under Title VII; non-payment of costs was not essential to the machinery set up by Title VII, and holding that non-payment of costs was not participation for Title VII purposes did not interfere with employees' access to statutory remedial mechanisms, since the employee already had an opportunity to file the original action. Settle v. Elixir Indus., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22296 (M.D.N.C. Dec. 3, 2003).

Court granted defendant employer's motion to dismiss under Fed. R. Civ. P. 12(b)(6) in plaintiff employee's retaliatory discharge suit against the employer, under 42 U.S.C.S § 2000e-3 of Title VII of the Civil Rights Act of 1964 (Title VII) and the North Carolina Equal Employment Protection Act (Act), G.S. 143-422.1 to 143-422.3 (using the Title VII framework when analyzing claims under the Act), as, inter alia, the employee's failure to pay costs taxed against the employee in a prior Title VII suit against the employer was not protected as opposition under Title VII; non-payment of costs was not similar to complaining informally to the employer or participating in an internal grievance proceeding, and disciplining an employee for failing to pay a sum that was effectively a debt owed to the employee's employer was the type of reasonable control Congress intended to leave in the hands of employers.

Settle v. Elixir Indus., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22296 (M.D.N.C. Dec. 3, 2003).

Public Policy Exception to At-Will Employment. —

Court declined to hold, in the absence of North Carolina precedent, that discharge in violation of the medical-examination-and-inquiry provisions of the North Carolina Equal Employment Practices Act, G.S. 143-422.1 to 143-422.3, or the Americans with Disabilities Act rose to the level of a public policy concern to justify creating a new and distinct Coman claim. Moreover, in light of the fact that the public policy exception to the employment-at-will doctrine was a narrow one, any expansion of public policy in this area was better left to the legislature of North Carolina or its courts, therefore the former employee's wrongful discharge in violation of public policy claim was dismissed. Sabrowski v. Albani-Bayeux, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 23242 (M.D.N.C. Dec. 19, 2003).

Construction. —

Whether North Carolina courts would extend the public policy wrongful discharge doctrine to employers with less than 15 employees was manifestly an issue for the state, not the federal courts, to resolve. Jarman v. Deason, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 14330 (W.D.N.C. Aug. 18, 2003).

Sexual Discrimination. — Employer was not entitled to dismissal under Fed. R. Civ. P. 12(b)(6) of an employee's wrongful termination action where the employee's complaint alleged that she was discharged from her employment and that the discharge was unlawful or in violation of the express public policy of North Carolina; employment termination due to a person's sex was a violation of North Carolina public policy, as defined in G.S. 143-422.2. U.S. EEOC v. Bojangles Rests., Inc., 284 F. Supp. 2d 320, 2003 U.S. Dist. LEXIS 16834 (M.D.N.C. 2003).

No Cause of Action for Constructive Discharge. — Summary judgment was granted for defendant on plaintiff's claim that he was constructively discharged on the basis of race in violation of the public policy of North Carolina as articulated in the North Carolina Equal Employment Practices Act, G.S. 143-422.1 through G.S. 143-422.3, because North Carolina only recognized the public-policy exception to the employment-at-will doctrine in cases of actual, as opposed to constructive, discharge. Mosley v. Bojangles' Rests., Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 5469 (M.D.N.C. Mar. 30, 2004).

Private Right of Action. —

Plaintiff's wrongful discharge claim failed as a matter of law, because North Carolina did not recognize plaintiff's tort claims under the North Carolina Equal Employment Practices Act, G.S. 143-422.1 et seq., for wrongful constructive discharge or wrongful discharge in retaliation for complaints of sexual harassment. Lowe v. Unifi, Inc., 292 F. Supp. 2d 773, 2003 U.S. Dist. LEXIS 20887 (M.D.N.C. 2003).

In an action in which former employees filed suit against their former employer pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., and the North Carolina Equal Employment Practices Act (NCEEPA), G.S. 143-422.1 et seq., the employer was granted summary judgment on the employees' NCEEPA claims; North Carolina courts and federal courts applying North Carolina law have found repeatedly that no private cause of action exists for retaliation, hostile work environment, disparate treatment, or constructive discharge in violation of public policy. Swann v. Roadway Express, Inc., — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 9448 (M.D.N.C. May 14, 2004).

Disability Discrimination. —

District court granted summary judgment to the employers on the employee's claim for wrongful discharge on the basis of disability in violation of public policy as stated in the North Carolina Equal Employment Practices Act, G.S. 143-422.1 to G.S. 143-422.3, because the North Carolina courts did not recognized the tort of wrongful discharge. Gallimore v. Newman Mach. Co., 301 F. Supp. 2d 431, 2004 U.S. Dist. LEXIS 1594 (M.D.N.C. 2004).

Plaintiff's Wrongful Discharge Claim Jurisdictionally Barred by the Eleventh Amendment. — Contrary to defendants' argument, G.S. 143-422.2 could be applied to allow a plaintiff to bring a common law claim for wrongful discharge; however, defendants' removal of the former employee's North Carolina Equal Employment Practices Act (NCEEPA), N.C. Gen. Stat. § 143-422.1 et seq., based common law wrongful discharge tort claim to federal court did not constitute a waiver of the State's Eleventh Amendment immunity. Therefore, the employee's count II, which was in essence a common law wrongful discharge claim against the university, was jurisdictionally barred by the Eleventh Amendment. Ji-Da Dai v. Univ. of N.C., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 15880 (M.D.N.C. Sept. 2, 2003).

Cited in Carter v. Rockingham County Bd. of Educ., 158 N.C. App. 687, 582 S.E.2d 69, 2003 N.C. App. LEXIS 1279 (2003); Lawson v. Tyco Elecs. Corp., 286 F. Supp. 2d 639, 2003 U.S. Dist. LEXIS 18231 (M.D.N.C. 2003); Watkins v. Hospitality Group Mgmt., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22291 (M.D.N.C. Dec. 1, 2003).

Article 68.

Regulation of Boxing.

Editor's Note. — Session Laws 2004-124, s. 18.2(c), effective July 1, 2004, substituted "Regulation of Boxing" for "North Carolina State Boxing Commission" in the Article heading.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-650: Repealed by Session Laws 2004-124, s. 18.2(a), effective July 1, 2004.

§ 143-651. Definitions.

The following definitions apply in this Article:

(1) Amateur. — A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) Announcer. — Any person who engages in the act of announcing a boxing match.

(3) Boxer. — Any person who engages as a participant in a boxing match.

(4) Boxing match. — A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).

(5) Repealed by Session Laws 2004-124, s. 18.2.(a), effective July 1, 2004.

(6) Contest. — A boxing match in which the participants strive to win.

(7) Contestant. — Any person who engages as a participant in a boxing match.

(7a) Division. — The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety.

(8) Exhibition. — A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) Judge. — A person who has a vote in determining the winner of any match or contest.

(10) Kickboxer. — Any person who engages as a participant in a kickboxing match.

(11) Kickboxing match. — A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) Licensee. — Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) Manager. — Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the compensation. The term "manager" shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to representing the interests of a professional boxer as a client.

b. Directs or controls the professional boxing activities of any professional boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) Match. — Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) Matchmaker. — A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) Natural person. — An individual.

(17) Participant. — Any person who engages in a match or exhibition and performs as a boxer.

(18) Person. — An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) Physician. — An individual licensed to practice medicine in this State.

(20) Professional. — Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) Promoter. — Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) Referee. — The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) Ring official. — Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. — A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. — Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the Division.

North Carolina Boxing Commission.

(24) Second. — Any person who will work or be present in the corner of a participant for the duration of a match.

(25) Timekeeper. — Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. — Any person who competes in a toughman event.

(25b) Toughman event. — An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) Ultimate warrior match. — A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article. (1995, c. 499, s. 1; 1997-504, s. 1; 1998-23, s. 18; 1998-212, s. 19.11(g); 2004-124, ss. 18.2(a), 18.2(b), 18.2(e).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 18.2.(e), provides: "The word 'Commission' shall be replaced with 'Division' every place that word appears in Article 68 of Chapter 143 of the General Statutes."

Subsection (23b) of this section contains a reference to the "North Carolina Boxing Commission." Pursuant to Session Laws 2004-124, s. 18.2(e), "Commission" was changed to "Division"; however, because no provision was made for the deletion of "North Carolina Boxing," subsection (23a) is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 18.2(g), provides: "The Department of Crime Control and Public Safety shall use funds available from salary reserves to reclassify the two positions in the North Carolina State Boxing Commission and transfer them to the Alcohol Law Enforcement Division."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, ss. 18.2(a), (b), and (e), effective July 1, 2004, repealed former subdivision (5), which defined "Commission" as the "North Carolina Boxing Commission"; added subsection (7a); and substituted "Division" for "Commission" throughout the section.

§ 143-652: Repealed by Session Laws 2004-124, s. 18.2.(a), effective July 1, 2004.

§ 143-652.1. Regulation of Boxing.

The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety shall regulate live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Division shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996. (2004-124, s. 18.2(d).)

Editor's Note. — Session Laws 2004-124, s. 18.2(g), provides: "The Department of Crime Control and Public Safety shall use funds available from salary reserves to reclassify the two positions in the North Carolina State Boxing Commission and transfer them to the Alcohol Law Enforcement Division."

Session Laws 2004-124, s. 33.6, made this section effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-654. Licensing and permitting.

(a) License and Permit Required. — Except for sanctioned amateur matches, it is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Division has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. — All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Division the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Division may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Division deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Division.

(c) Surety Bond. — An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Division, a surety bond payable to the Division for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Division or (ii) the promoter's failure to fulfill the obligations of any contract related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Division. All surety bonds shall be upon forms approved by the Secretary of Crime Control and Public Safety and supplied by the Division.

(d) Permit. — A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Division the appropriate nonrefundable fee and any forms or documents the Division may require. (1995, c. 499, s. 1; 1997-504, s. 4; 1998-23, s. 18; 1998-212, s. 19.11(c), (g); 1999-237, s. 20.3(b); 2004-124, s. 18.2(e).)

Editor's Note. — Session Laws 2004-124, s. 18.2(g), provides: "The Department of Crime Control and Public Safety shall use funds available from salary reserves to reclassify the two positions in the North Carolina State Boxing Commission and transfer them to the Alcohol Law Enforcement Division."

Session Laws 2004-124, s. 1.2, provides:

"This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 18.2(e), effective July 1, 2004, substituted "Division" for "Commission" throughout.

§ 143-655. Fees; State Boxing Commission Revenue Account.

(a) License Fees. — The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. — The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 — 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. — There is created the State Boxing Commission Revenue Account within the Department of Crime Control and Public Safety. Monies [moneys] collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article. (1995, c. 499, s. 1; 1998-212, s. 19.11(d); 2004-124, s. 18.2(e).)

Editor's Note. — Session Laws 2004-124, s. 18.2(e), provides: "The word 'Commission' shall be replaced with 'Division' every place that word appears in Article 68 of Chapter 143 of the General Statutes." At the direction of the Revisor of Statutes, "Commission" was not changed to "Division" in this section.

Session Laws 2004-124, s. 18.2(g), provides: "The Department of Crime Control and Public Safety shall use funds available from salary reserves to reclassify the two positions in the North Carolina State Boxing Commission and transfer them to the Alcohol Law Enforcement Division."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-656. Contracts and financial arrangements.

Any contract between licensees and related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Division. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing. (1995, c. 499, s. 1; 1997-504, s. 5; 1998-23, s. 18; 1998-212, s. 19.11(g); 2004-124, s. 18.2(e).)

Editor's Note. — Session Laws 2004-124, s. 18.2(g), provides: "The Department of Crime Control and Public Safety shall use funds available from salary reserves to reclassify the two positions in the North Carolina State Boxing Commission and transfer them to the Alcohol Law Enforcement Division."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 18.2(e), effective July 1, 2004, substituted "Division" for "Commission."

Article 69.

Criminal Justice Information Network Governing Board.

§ 143-661. Criminal Justice Information Network Governing Board — creation; purpose; membership; conflicts of interest.

(a) The Criminal Justice Information Network Governing Board is established within the Department of Crime Control and Public Safety, to operate the State's Criminal Justice Information Network, the purpose of which shall be to provide the governmental and technical information systems infrastructure necessary for accomplishing State and local governmental public safety and justice functions in the most effective manner by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement, judicial, and corrections agencies. The Board is established within the Department of Crime Control and Public Safety, for organizational and budgetary purposes only and the Board shall exercise all of its statutory powers in this Article independent of control by the Department of Crime Control and Public Safety.

(b) The Board shall consist of 21 members, appointed as follows:

(1) Five members appointed by the Governor, including one member who is a director or employee of a State correction agency for a term to begin September 1, 1996 and to expire on June 30, 1997, one member who is an employee of the North Carolina Department of Crime Control and Public Safety for a term beginning September 1, 1996 and to expire on June 30, 1997, one member selected from the North Carolina Association of Chiefs of Police for a term to begin September 1, 1996 and to expire on June 30, 1999, one member who is an employee of the Department of Juvenile Justice and Delinquency Prevention, and one member who represents the Division of Motor Vehicles.

(2) Six members appointed by the General Assembly in accordance with G.S. 120-121, as follows:

a. Three members recommended by the President Pro Tempore of the Senate, including two members of the general public for terms to begin on September 1, 1996 and to expire on June 30, 1997, and one member selected from the North Carolina League of Municipalities who is a member of, or an employee working directly for, the governing board of a North Carolina municipality for a term to begin on September 1, 1996 and to expire on June 30, 1999; and

b. Three members recommended by the Speaker of the House of Representatives, including two members of the general public for terms to begin on September 1, 1996 and to expire on June 30, 1999, and one member selected from the North Carolina Association of County Commissioners who is a member of, or an employee working directly for, the governing board of a North Carolina county for a term to begin on September 1, 1996 and to expire on June 30, 1997.

(3) Two members appointed by the Attorney General, including one member who is an employee of the Attorney General for a term to begin on September 1, 1996 and to expire on June 30, 1997, and one member from the North Carolina Sheriffs' Association for a term to begin on September 1, 1996 and to expire on June 30, 1999.

(4) Six members appointed by the Chief Justice of the North Carolina Supreme Court, as follows:

a. The Director of the Administrative Office of the Courts, or an employee of the Administrative Office of the Courts, for a term beginning July 1, 1997, and expiring June 30, 2001.

b. One member who is a district attorney or an assistant district attorney upon the recommendation of the Conference of District Attorneys of North Carolina, for a term beginning July 1, 1998, and expiring June 30, 1999.

c. Two members who are superior court or district court judges for terms beginning July 1, 1998, and expiring June 30, 2001.

d. One member who is a magistrate upon the recommendation of the North Carolina Magistrates' Association, for a term beginning July 1, 1998, and expiring June 30, 1999.

e. One member who is a clerk of superior court upon the recommendation of the North Carolina Association of Clerks of Superior Court, for a term beginning July 1, 1998, and expiring June 30, 1999.

(5) One member appointed by the State Chief Information Officer.

(6) One member appointed by the President of the North Carolina Chapter of the Association of Public Communications Officials International, who is an active member of the Association, for a term to begin on September 1, 1996 and to expire on June 30, 1999.

The respective appointing authorities are encouraged to appoint persons having a background in and familiarity with criminal information systems and networks generally and with the criminal information needs and capacities of the constituency from which the member is appointed.

As the initial terms expire, subsequent members of the Board shall be appointed to serve four-year terms. At the end of a term, a member shall continue to serve on the Board until a successor is appointed. A member who is appointed after a term is begun serves only for the remainder of the term and until a successor is appointed. Any vacancy in the membership of the Board shall be filled by the same appointing authority that made the appointment, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122.

(c) Members of the Board shall not be employed by or serve on the board of directors or other corporate governing body of any information systems,

computer hardware, computer software, or telecommunications vendor of goods and services to the State or to any unit of local government in the State. No member of the Board shall vote on an action affecting solely the member's own State agency or local governmental unit or specific judicial office. (1996, 2nd Ex. Sess., c. 18, s. 23.3(a); 1998-202, s. 9; 1998-212, s. 18.2(b); 2001-424, s. 23.6(b); 2001-487, s. 90; 2003-284, s. 17.1(a); 2004-129, s. 42.)

Effect of Amendments. —

Session Laws 2004-129, s. 42, effective July 1, 2004, substituted "State Chief Information Officer" for "Chair of the Information Resource Management Commission, who is the Chair or a member of that Commission, for a term to begin on September 1, 1996 and to expire on June 30, 1999" in subdivision (b)(5).

§ 143-663. Powers and duties.

(a) The Board shall have the following powers and duties:

(1) To establish and operate the Network as an integrated system of State and local government components for effectively and efficiently storing, communicating, and using criminal justice information at the State and local levels throughout North Carolina's law enforcement, judicial, juvenile justice, and corrections agencies, with the components of the Network to include electronic devices, programs, data, and governance and to set the Network's policies and procedures.

(2) To develop and adopt uniform standards and cost-effective information technology, after thorough evaluation of the capacity of information technology to meet the present and future needs of the State and, in consultation with the Office of Information Technology Services, to develop and adopt standards for entering, storing, and transmitting information in criminal justice databases and for achieving maximum compatibility among user technologies.

(3) To identify the funds needed to establish and maintain the Network, identify public and private sources of funding, and secure funding to:

a. Create the Network and facilitate the sharing of information among users of the Network; and

b. Make grants to local government users to enable them to acquire or improve elements of the Network that lie within the responsibility of their agencies or State agencies; provided that the elements developed with the funds must be available for use by the State or by local governments without cost and the applicable State agencies join in the request for funding.

(4) To provide assistance to local governments for the financial and systems planning for Network-related automation and to coordinate and assist the Network users of this State in soliciting bids for information technology hardware, software, and services in order to assure compliance with the Board's technical standards, to gain the most advantageous contracts for the Network users of this State, and to assure financial accountability where State funds are used.

(5) To provide a liaison among local government users and to advocate on behalf of the Network and its users in connection with legislation affecting the Network.

(6) To facilitate the sharing of knowledge about information technologies among users of the Network.

(7) To take any other appropriate actions to foster the development of the Network.

(b) All grants or other uses of funds appropriated or granted to the Board shall be conditioned on compliance with the Board's technical and other standards. (1996, 2nd Ex. Sess., c. 18, s. 23.3(a); 2003-284, s. 17.2(b); 2004-129, s. 43.)

Effect of Amendments. — Session Laws 2004-129, s. 43, effective July 1, 2004, substituted "Office of Information Technology Services" for "Information Resource Management Commission" in subdivision (a)(2).

Article 75.

Tobacco Trust Fund.

§ 143-719. Tobacco Trust Fund; creation; investment; priority use.

(a) Fund Established. — The Tobacco Trust Fund is established in the Office of the State Treasurer. The Fund shall be used for the purposes provided in this Article.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer is the custodian of the Fund and shall invest the assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the Fund become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year is carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to the directives of the Commission.

(c) Priority Use of Funds. — As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-179. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%). (2000-147, s. 3; 2004-179, s. 1.4.)

Editor's Note. — Session Laws 2004-179, s. 1, provides: "This part may be cited as the State Capital Facilities Act of 2004."

Session Laws 2004-179, s. 8.3, contains a severability clause.

Effect of Amendments. — Session Laws 2004-179, s. 1.4, effective July 1, 2004, added "priority use" at the end of the section heading; substituted "for the purposes provided in" for "to provide financial assistance in accordance with" in subsection (a); in subsection (b), substituted "is" for "shall be" two times, and deleted "shall" preceding "become part"; and added subsection (c).

§ 143-722. Reporting.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and the chairs of the House and Senate Appropriations Committees regarding the implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

(b) **(Effective until July 1, 2005)** Any non-State corporation, organization, or institution that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S 143-6.1.

G.S. 143-722(b) is set out twice. See notes.

(b) **(Effective July 1, 2005)** Any non-State entity as that term is defined in G.S. 143-6.2 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143-6.2. (2000-147, s. 3; 2004-196, s. 4.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2005. The second version of subsection (b) set out above is effective July 1, 2005.

Effect of Amendments. — Session Laws 2004-196, s. 4, effective July 1, 2005, in subsection (b), substitutes "entity as that term is defined in G.S. 143-6.2" for "corporation, organization, or institution," and substitutes "G.S. 143-6.2" for "G.S 143-6.1."

Article 76.

North Carolina Geographic Information Coordinating Council.

§ 143-725. Council established; role of the Center for Geographic Information and Analysis.

(a) Council Established. — The North Carolina Geographic Information Coordinating Council ("Council ") is established to develop policies regarding the utilization of geographic information, GIS systems, and other related technologies. The Council shall be responsible for the following:

(1) Strategic planning.

(2) Resolution of policy and technology issues.

(3) Coordination, direction, and oversight of State, local, and private GIS efforts.

(4) Advising the Governor, the General Assembly, and the State Chief Information Officer as to needed directions, responsibilities, and funding regarding geographic information.

The purpose of this statewide geographic information coordination effort shall be to further cooperation among State, federal, and local government agencies; academic institutions; and the private sector to improve the quality, access, cost-effectiveness, and utility of North Carolina's geographic information and to promote geographic information as a strategic resource in the State. The Council shall be located in the Office of the Governor for organizational, budgetary, and administrative purposes.

(b) Role of CGIA. — The Center for Geographic Information and Analysis (CGIA) shall staff the Geographic Information and Coordinating Council and its committees. CGIA shall manage and distribute digital geographic information about North Carolina maintained by numerous State and local government agencies. It shall operate a statewide data clearinghouse and provide Internet access to State geographic information. (2001-359, s. 1; 2004-129, s. 44.)

Effect of Amendments. — Session Laws 2004-129, s. 44, effective July 1, 2004, substituted "State Chief Information Officer" for "Information Resource Management Commission (IRMC)" in subdivision (a)(4).

Article 78.

Commission on State Property.

§ 143-735. Commission established; purpose; membership.

(a) There is created the Commission on State Property. The Commission shall be located administratively within the Department of Administration but shall carry out its statutory powers and duties independently of the Department of Administration.

(a1) The purpose of the Commission is to identify State-owned real property that is (i) both surplus and suitable for sale on the private market or (ii) suitable for sale and leaseback and to make recommendations concerning the disposition of the property. The Commission shall consult with real estate salespersons and brokers, real estate appraisers, and other knowledgeable persons in determining its recommendations.

(b) The Commission shall consist of 16 members appointed as follows:

(1) Eight members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, including one of whom shall be designated as cochair.

(2) Eight members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, including one member who shall be designated as cochair.

The members appointed to the Commission shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Commission, including individuals who have expertise in the fields of real estate, property development, and other related fields. The appointing authorities shall each consider appointing at least one real estate salesperson or broker and one real estate appraiser to the Commission.

No member of the Commission may be a member of the Senate or of the House of Representatives. No member or a person of the member's immediate family or business with which the member is associated shall be involved in or benefit from any sale of State-owned property under this Article.

(c) The terms of four of the initial members appointed pursuant to subdivision (b)(1) of this section and four of the initial members appointed pursuant to subdivision (b)(2) of this section shall be for one year. The terms of the remainder of the initial members shall be for two years. Subsequent terms of all members shall be for two years.

Initial terms shall commence on August 15, 2004.

(d) The Commission shall meet at least once a quarter and may meet at other times upon the call of the cochairs. A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(e) The Commission cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties and may appoint non-Commission members to serve on each subcommittee as resource persons. Resource persons shall be voting members of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6.

(f) The Commission shall hire its professional and clerical staff.

(g) The Commission shall adopt rules for the administration of this Article, including rules regarding the participation of real estate salespersons and real estate brokers. (2004-124, s. 6.4(a).)

Editor's Note. — Session Laws 2004-124, s. 6.4.(b), provides: "Of the funds appropriated to the Department of Administration for the 2004-2005 fiscal year, the Director of the Budget shall transfer two hundred thousand dollars ($200,000) to the Commission on State Property established in subsection (a) of this section. Notwithstanding the provisions of G.S. 146-30, the first two hundred thousand dollars ($200,000) of the net proceeds of dispositions of property that would otherwise be deposited with the State Treasurer and credited to the General Fund shall be used to offset the transfer of funds from the Department of Administration to the Commission on State Property."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-736. Duties of the Commission.

(a) The Commission on State Property shall:

(1) Adopt guidelines to ensure the participation of real estate salespersons and real estate brokers in its work and to encourage real estate salespersons and real estate brokers to examine the State's real property inventory to ascertain which properties are either surplus and are suitable for sale or are suitable for sale and leaseback.

(2) Notify each licensed real estate salesperson and real estate broker in the State that the Commission will consider recommendations from real estate salespersons and brokers on State real property that is suitable for sale or sale and leaseback.

(3) Consider recommendations from real estate salespersons and brokers and the general public. Notwithstanding any other provision of this Article, no real estate salesperson or broker may recommend more than five properties.

(4) Develop recommendations on State property that is (i) both surplus and suitable for sale or (ii) suitable for sale and leaseback and report its recommendations to the Department of Administration, the Governor, and the Joint Legislative Commission on Governmental Operations. The Department of Administration shall consider the recommendations of the Commission on State Property and respond to them within 60 days of receiving them. In its response, the Department shall either concur with the recommendations or set out the reasons it does not concur with them.

If the Department concurs that the property shall be sold or sold and leased back, the process for proceeding with the sale or sale and leaseback shall be the same as for other sales of State property.

If the Department does not concur, the Commission shall recommend the sale of the property or the sale and leaseback of the property to the Governor and the Council of State. If the Governor and the Council of State approve the sale, the Department of Administration shall complete the transaction.

In the instance of a proposed sale or sale and leaseback that is undertaken pursuant to this section, the Department shall enter into an exclusive contract with the real estate salesperson or broker who recommended the sale or leaseback of the property to obtain an offer acceptable to the Department to sell or sell and leaseback the property. In the event the property was recommended by more than one real estate salesperson or broker, the Commission shall allocate the marketing responsibilities of the salespersons or brokers recommending the property and determine the allocation of the brokerage fees. A contract with any real estate salesperson or broker under this

Article shall not exceed six months in duration and shall include the conditions for receipt of brokerage fees set forth in G.S. 143-737. After the expiration of the exclusive contract, the property shall be sold or sold and leased back in the same manner as other real property of the State. (2004-124, s. 6.4(a).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143-737. Brokerage fees.

Notwithstanding any other provision of Chapter 146 of the General Statutes, a real estate salesperson or broker responsible for making a recommendation for the sale or leaseback of State property that has been adopted by the Commission and recommended to the Department pursuant to G.S. 143-736 shall be entitled to brokerage fees only if all of the following conditions are met:

(1) The real estate salesperson or broker is licensed by the North Carolina Real Estate Commission.

(2) The transaction closes.

(3) The brokerage fees do not exceed those customary in the industry and are consistent with rules adopted by the Commission. (2004-124, s. 6.4(a).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

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ARTICLE 1.

General Provisions.

Part 3. Rules Review Commission.

§ 143B-30.1. Rules Review Commission created.

(a) The Rules Review Commission is created. The Commission shall consist of 10 members to be appointed by the General Assembly, five upon the recommendation of the President Pro Tempore of the Senate, and five upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of six members of the Commission. The Chief Administrative Law Judge, Office of Administrative Hearings, shall be responsible for the hiring and supervision of the Director and staff to the Commission.

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Chief Administrative Law Judge, Office of Administrative Hearings. Nothing in this Article shall be construed to exempt employees of the Commission from the State Personnel Act.

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code. (1985 (Reg. Sess., 1986), c. 1028, s. 32; 1987 (Reg. Sess., 1988), c. 1111, s. 2; 1989, c. 35, s. 2; 1989 (Reg. Sess., 1990), c. 1038, s. 18; 1991, c. 418, s. 11; 1991 (Reg. Sess., 1992), c. 1030, s. 43; 1995, c. 490, s. 43; 1997-495, s. 90(a), (b); 2004-124, s. 22A.1(b).)

Editor's Note. — Session Laws 2004-124, s. 22A.1.(a) provides: "All personnel and equipment presently assigned to the Rules Review Commission for the purpose of carrying out Article 2A of Chapter 150B of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a). The Chief Administrative Law Judge shall be responsible for the hiring of the Director and other staff of the Rules Review Commission."

Session Laws 2004-124, s. 22A.1.(c) provides: "The Rules Review Commission may hire outside counsel, the expenses to be paid from the Reserve Fund. Outside counsel for the Rules Review Commission shall be selected by the Chief Administrative Law Judge, Office of Administrative Hearings."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 22A.1(b), effective July 1, 2004, in subsection (c), deleted the former last sentence, which read "The Commission is an independent agency under Article III, Section 11 of the Constitution", and added the present last sentence; and in subsection (e), substituted "Chief Administrative Law Judge, Office of Administrative Hearings" for "Commission" at the end of the first sentence.

Article 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-49. Department of Cultural Resources — creation, powers and duties.

Editor's Note. — Session Laws 2000-138, s. 17.1, as amended by Session Laws 2002-180, ss. 3.1 to 3.3, Session Laws 2004-124, ss. 41.1 to 41.5, and Session Laws 2004-203, s. 66, provides: "(a) There is hereby established the 1898 Wilmington Race Riot Commission. The Commission shall be located within the Department of Cultural Resources.

"(b) The purpose of the Commission shall be to develop a historical record of the 1898 Wilmington Race Riot. In developing such a record, the Commission shall gather information, including oral testimony from descendants of those affected by the riot or others, examine documents and writings, and otherwise take such actions as may be necessary or proper inaccurately identifying information having historical significance to the 1898 Wilmington Race Riot, including the economic impact of the riot on African-Americans in this State.

"(c) The Commission shall consist of 13 members, each of whom shall serve a five-year term. Commission members shall be appointed on or before September 1, 2000, as follows:

"(1) The President Pro Tempore of the Senate shall appoint three members.

"(2) The Speaker of the House of Representatives shall appoint three members.

"(3) The Governor shall appoint three public members, one of whom shall be a historian.

"(4) The Mayor and City Council of the City of Wilmington shall appoint two members.

"(5) The New Hanover County Commissioners shall appoint two members.

"The Commission shall terminate on December 31, 2005.

"(d) A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

"(e) The Commission may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. Members serve at the pleasure of the appointing authority. A member subject to disciplinary proceedings shall be disqualified from participating in the official business of the Commission until the charges have been resolved.

"(f) Members of the Commission may receive per diem or reimbursement for travel or subsistence. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the per diem of the Commission.

"(g) The Commission's officers shall consist of two cochairs, a vice-chair, and other officers deemed necessary by the Commission to carry out the purposes of this Article. The President Pro Tempore of the Senate and the Speaker of

the House of Representatives shall appoint the cochairs of the Commission. All other officers shall be elected by the Commission. All officers shall serve for five-year terms and shall serve until their successors are elected and qualified.

"(h) The Commission shall meet at least quarterly to conduct business as authorized in subsection (b) of this section. A majority of Commission members shall constitute a quorum.

"(i) The Department of Cultural Resources shall provide necessary clerical and administrative support services to the Commission.

"(j) The Commission may submit to the General Assembly an interim report of its findings and recommendations. The Commission shall submit to the General Assembly a final report of its findings and recommendations no later than December 31, 2005. The final report may include suggestions for a permanent marker or memorial of the riot and whether to designate the event with a historic site."

Article 3.

Department of Health and Human Services.

Part 1. General Provisions.

§ 143B-136.1. Department of Health and Human Services — creation.

Editor's Note. —

Session Laws 2004-124, s. 10.1, provides: "The Department of Health and Human Services shall centralize all activities throughout the Department relating to the coordination and processing of criminal record checks required by law. The centralization shall include the transfer of positions, corresponding State appropriations, federal funds, and other funds. The Department shall implement the centralization beginning January 1, 2005, and shall report on the details of the centralization and implementation to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than January 1, 2005."

Session Laws 2004-124, s. 10.2C.(a)-(d), provides: "(a) Based upon information gathered by the Department of Health and Human Services in conducting the recently completed department-wide examination and analysis of the Department's information technology infrastructure, including IT expenditures and management structure, the Department shall complete planning and begin implementation of those plans to consolidate management of all IT operations, services, and functions that are common to and necessary in all divisions, offices, and programs of the Department.

"(b) The consolidation and implementation should place emphasis on improving successful and timely implementation of IT projects and ongoing maintenance within the Department while eliminating duplication of efforts and equipment, controlling the use of personal service contracts, establishing continuity in process and systems development, strengthening systems security, coordinating and overseeing all IT efforts within the Department, and identifying other efficiencies. The plan for consolidation of these IT functions shall be implemented in a manner that will allow for the maintenance of a complete accounting of IT efforts within the Department and the costs related to those efforts, including identification of funding needs. The plan should set forth the management and operational structure of the consolidated IT function, including how the structure will enhance IT operations and efficiency within the Department.

"(c) The Department shall restrict the future creation or filling of any IT-related position within any departmental division, office, or program when the function of the position is determined under the consolidation plan to be properly placed or managed within the consolidated IT function.

"(d) The consolidation plan, including time lines for implementation, shall be submitted to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division upon completion, but not later than October 1, 2004. The Department shall provide a report on the progress of implementation of the consolidation plan to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2005."

Session Laws 2004-124, s. 10.2D, provides: "Pursuant to rules adopted by the State Controller, an employee of the Department of Health and Human Services may, in writing, authorize the Department to periodically deduct from the employee's salary or wages paid for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department."

Session Laws 2004-124, s. 10.28B.(a)-(g), provides: "(a) The Department of Health and Human Services shall expand the pilot accreditation process for local health departments to include additional counties.

"(b) The Pilot Accreditation Advisory Board (hereafter 'Advisory Board') is established within the North Carolina Institute for Public Health. The Advisory Board shall be composed of 15 members appointed by the Secretary of Health and Human Services as follows:

"(1) Four shall be county commissioners recommended by the North Carolina Association of County Commissioners, and four shall be members of a local board of health as recommended by the North Carolina Association of Local Boards of Health.

"(2) Two local health directors.

"(3) One staff member from the Department of Health and Human Services, Division of Public Health.

"(4) Three members at large.

"(5) One recommended by the Secretary of Environment and Natural Resources, from the Division of Environmental Health.

"(c) Members of the Advisory Board who are not officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Advisory Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

"(e) Of the funds appropriated in this act to the Department of Health and Human Services the sum of fifty thousand dollars ($50,000) for the 2004-2005 fiscal year shall be allocated for administrative costs and for activities of the Pilot Accreditation Advisory Board for the accreditation of additional local health departments. The Department shall contract with the Institute for Public Health, which shall be responsible for implementation of the pilot accreditation process.

"(f) Not later than April 1, 2005, the Pilot Accreditation Advisory Board shall report its findings to the Director of the Institute for Public Health, the Secretary of the Department of Health and Human Services, and the co-chairs of the House and Senate Appropriations Committees for Health and Human Services.

"(g) The North Carolina Public Health Task Force 2004 shall continue its work on the Public Health Improvement Plan and in its final report to the General Assembly shall include comparisons of the recommendations of the Task Force with the Model State Public Health Act, Public Health Statute Modernization National Excellence Collaborative, September 2003.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Part 3A. Education Programs in Residential Schools.

§ 143B-146.13. School technology plan.

(a) No later than December 15, 1998, the Secretary shall develop a school technology plan for the residential schools that meets the requirements of the State school technology plan. In developing a school technology plan, the Secretary is encouraged to coordinate its planning with other agencies of State and local government, including local school administrative units.

The Office of Information Technology Services shall assist the Secretary in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the Secretary in developing the instructional and technological aspects of the plan.

The Secretary shall submit the plan that is developed to the Office of Information Technology Services for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the instructional aspects of the plan. The State Board of

Education, after consideration of the evaluations of the Office of Information Technology Services and the Department of Public Instruction, shall approve all plans that comply with the requirements of the State school technology plan.

(b) After a plan is approved by the State Board of Education, all funds spent for technology in the residential schools shall be used to implement the school technology plan. (1998-131, s. 5; 2004-129, s. 45.)

Effect of Amendments. — Session Laws 2004-129, s. 45, effective July 1, 2004, substituted "Office of Information Technology Services" for "Information Resources Management Commission" throughout subsection (a).

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

More at Four Program — Session Laws 2003-284, s. 10.40(a) through (e), as amended by Session Laws 2004-124, s. 10.38, provides: "(a) Of the funds appropriated to the Department of Health and Human Services, the sum of forty-three million one hundred twenty-one thousand eight hundred dollars ($43,121,800) in the 2003-2004 fiscal year and the sum of fifty million nine hundred seventy-nine thousand two dollars ($50,979,002) in the 2004-2005 fiscal year shall be used to implement 'More At Four', a voluntary prekindergarten program for at-risk four-year-olds.

"(b) The Department of Health and Human Services and the Department of Public Instruction shall establish the 'More At Four' Pre-K Task Force to oversee development and implementation of the pilot program. The membership shall include:

"(1) Parents of at-risk children.

"(2) Representatives with expertise in early childhood development.

"(3) Classroom teachers who are certified in early childhood education.

"(4) Representatives of the private not-for-profit and for-profit child care providers in North Carolina.

"(5) Employees of the Department of Health and Human Services who are knowledgeable in the areas of early childhood development, current State and federally funded efforts in child development, and providing child care.

"(6) Representatives of local Smart Start partnerships.

"(7) Representatives of local school administrative units.

"(8) Representatives of Head Start prekindergarten programs in North Carolina.

"(9) Employees of the Department of Public Instruction.

"(c) The Department of Health and Human Services and the Department of Public Instruction, with guidance from the Task Force, shall continue the implementation of the 'More At Four' prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services, the Department of Public Instruction, and the Task Force and may consider the 'More At Four' Pre-K Task Force recommendations. The program shall include:

"(1) A process and system for identifying children at risk of academic failure.

"(2) A process and system for identifying children who are not being served first priority in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.

"(3) A curriculum or several curricula that are recommended by the Task Force. The Task Force will identify and approve appropriate research-based curricula. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote

measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.

"(4) An emphasis on ongoing family involvement with the prekindergarten program.

"(5) Evaluation of child progress through pre- and post-assessment of children in the statewide evaluation, as well as ongoing assessment of the children by teachers.

"(6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.

"(7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.

"(8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services, the Department of Public Instruction, and the Task Force. The Department may use the child care rating system to assist in determining program participation.

"(9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth to kindergarten education.

"(10) A local contribution. Programs must demonstrate that they are accessing resources other than 'More At Four'.

"(11) A system of accountability.

"(12) Collaboration with State agencies and other organizations. The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall collaborate with State agencies and other organizations such as the North Carolina Partnership for Children, Inc., in the design and implementation of the program.

"(13) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall consider the reallocation of existing funds from State and local programs that provide prekindergarten related care and services.

"(14) Recommendations for long-term organizational placement and administration of the program.

"(d) During the 2003-2004 fiscal year, the Department of Health and Human Services shall plan for expansion of the 'More At Four' program within existing resources to include four and five star rated centers and schools serving four-year-olds and develop guidelines for these programs. The Department shall analyze guidelines for use of the 'More At Four' funds, State subsidy funds, and Smart Start subsidy funds and devise a complementary plan for administration of funds for all four-year-old classrooms. The four and five star centers that choose to become a 'More at Four' program shall, at a minimum, receive curricula and access to training and workshops for 'More at Four' programs and be considered along with other 'More at Four' programs for T.E.A.C.H. funding. The Department shall ensure that no individual receives funding from more than one source for the same purpose or activity during the same funding period. For purposes of this subsection, sources shall include T.E.A.C.H., W.A.G.E.$., and T.E.A.C.H. Health Insurance programs for individual recipients.

The 'More At Four' program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through January 30, 2005, at which time any remaining funds for slots unfilled shall be transferred to the Division of Child Development to meet the needs of the waiting list for subsidized child care.

"(e) The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall submit a progress report by January 1, 2004, and May 1, 2004, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. This final report shall include the following:

"(1) The number of children participating in the program.

"(2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.

"(3) The expected expenditures for the programs and the source of the local match for each grantee.

"(4) The location of program sites and the corresponding number of children participating in the program at each site.

"(5) Activities involving Child Find in counties.

"(6) A comprehensive cost analysis of the program, including the cost per child served by the program.

"(7) The plan for expansion of 'More At Four' through existing resources as outlined in this section."

For similar provisions, see Session Laws 2001-424, s. 21.76B.

Smart Start Funding Study. — Session Laws 2004-161, ss. 35.1 to 35.13, established the Smart Start Funding Study Commission.

Session Laws 2004-161, s. 35.4, provides: "Duties of Commission. — The Commission shall study the funding of the North Carolina Partnership for Children, Inc. In conducting the study, the Commission shall consider the following:

"(1) The current funding system of the North Carolina Partnership for Children, Inc.

"(2) Any strategies for achieving full funding and full service for North Carolina's young children and families.

"(3) Funding equity among all counties and local partnerships.

"(4) Any other information the Commission deems relevant."

Session Laws 2004-161, s. 35.12, provides: "Report. — The Commission shall make its findings and recommendations in a final report to the 2005 General Assembly. Upon the earlier of the filing of its final report or the convening of the 2005 General Assembly, the Commission shall terminate."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 26 members:

a. The Secretary of Health and Human Services, ex officio, or the Secretary's designee;

b. Repealed by Session Laws 1997, c. 443, s. 11A.105.

c. The Superintendent of Public Instruction, ex officio, or the Superintendent's designee;

d. The President of the Community Colleges System, ex officio, or the President's designee;

e. Three members of the public, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;

f. Three members of the public, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;

g. Twelve members, appointed by the Governor. Three of these 12 members shall be members of the party other than the Governor's party, appointed by the Governor. Seven of these 12 members shall be appointed as follows: one who is a child care provider, one other who is a pediatrician, one other who is a health care provider, one other who is a parent, one other who is a member of the business community, one other who is a member representing

a philanthropic agency, and one other who is an early childhood educator;

h. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.

h1. The Chair of the North Carolina Partnership Board shall be appointed by the Governor;

i. Repealed by Session Laws 1998-212, s. 12.37B(a), effective October 30, 1998.

j. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the Senate;

k. One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of Representatives;

l. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the Senate;

m. One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the House of Representatives; and

n. The Director of the More at Four Pre-Kindergarten Program, or the Director's designee.

All members appointed to succeed the initial members and members appointed thereafter shall be appointed for three-year terms. Members may succeed themselves.

All appointed board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the North Carolina Partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the North Carolina Partnership regarding the disbursement of funds.

All ex officio members are voting members. Each ex officio member may be represented by a designee. These designees shall be voting members. No members of the General Assembly shall serve as members.

The North Carolina Partnership may establish a nominating committee and, in making their recommendations of members to be appointed by the General Assembly or by the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader of the Senate, the Majority Leader of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor shall consult with and consider the recommendations of this nominating committee.

The North Carolina Partnership may establish a policy on members' attendance, which policy shall include provisions for reporting absences of at least three meetings immediately to the appropriate appointing authority.

Members who miss more than three consecutive meetings without excuse or members who vacate their membership shall be replaced by the appropriate appointing authority, and the replacing member shall serve either until the General Assembly and the Governor can appoint a successor or until the replaced member's term expires, whichever is earlier.

The North Carolina Partnership shall establish a policy on membership of the local boards. No member of the General Assembly shall serve as a member of a local board. Within these requirements for local board membership, the North Carolina Partnership shall allow

local partnerships that are regional to have flexibility in the composition of their boards so that all counties in the region have adequate representation.

All appointed local board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the partnership regarding the disbursement of funds.

(2) The North Carolina Partnership and the local partnerships shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected and shall approve the ongoing plans, programs, and services developed and implemented by the local partnerships and hold the local partnerships accountable for the financial and programmatic integrity of the programs and services. The North Carolina Partnership may contract at the State level to obtain services or resources when the North Carolina Partnership determines it would be more efficient to do so.

In the event that the North Carolina Partnership determines that a local partnership is not fulfilling its mandate to provide programs and services designed to meet the developmental needs of children in order to prepare them to begin school healthy and ready to succeed and is not being accountable for the programmatic and fiscal integrity of its programs and services, the North Carolina Partnership may suspend all funds to the partnership until the partnership demonstrates that these defects are corrected. Further, at its discretion, the North Carolina Partnership may assume the managerial responsibilities for the partnership's programs and services until the North Carolina Partnership determines that it is appropriate to return the programs and services to the local partnership.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop a regional accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. All local partnerships shall participate in the regional accounting and contract management system.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations by up to ten percent (10%) on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated "superior", "satisfactory", or "needs improvement".

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chosen from past board chairs or duly elected officers currently serving on local partnerships' board of directors at the time of appointment and shall serve three-year terms. Seven of the members shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) Repealed by Session Laws 2001-424, s. 21.75(h), effective July 1, 2001.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.

(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by G.S. 143-6.1. Organizations subject to G.S. 159-34 shall be exempt from this requirement.

(d) The North Carolina Partnership for Children, Inc., shall make a report no later than December 1 of each year to the General Assembly that shall include the following:

(1) A description of the program and significant services and initiatives.
(2) A history of Smart Start funding and the previous fiscal year's expenditures.
(3) The number of children served by type of service.
(4) The type and quantity of services provided.
(5) The results of the previous year's evaluations of the Initiatives or related programs and services.

(6) A description of significant policy and program changes.

(7) Any recommendations for legislative action.

(e) The North Carolina Partnership shall develop guidelines for local partnerships to follow in selecting capital projects to fund. The guidelines shall include assessing the community needs in relation to the quantity of child care centers, assessing the cost of purchasing or constructing new facilities as opposed to renovating existing facilities, and prioritizing capital needs such as construction, renovations, and playground equipment and other amenities.

(f) The North Carolina Partnership for Children, Inc., shall establish uniform guidelines and a reporting format for local partnerships to document the qualifying expenses occurring at the contractor level. Local partnerships shall monitor qualifying expenses to ensure they have occurred and meet the requirements prescribed in this subsection. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1; 1995, c. 324, s. 27A.1; 1996, 2nd Ex. Sess., c. 18, s. 24.29(b); 1997-443, ss. 11.55(*l*), 11A.105; 1998-212, s. 12.37B(a), (b); 1999-84, s. 24; 1999-237, s. 11.48(a); 2000-67, s. 11.28(a); 2001-424, ss. 21.75(h), 21.75(i); 2002-126, s. 10.55(d); 2003-284, ss. 10.38(l), 10.38(m), 10.38(n); 2004-124, s. 10.37.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. —

Session Laws 2004-124, s. 10.37, effective July 1, 2004, in subdivision (a)(1), substituted "26" for "25" in the introductory paragraph, added subdivision (a)(1)n., and made a minor stylistic change.

Part 14B. Long-Term Care.

§ 143B-181.5. Long-term care policy.

Editor's Note. —

Session Laws 2004-124, s. 10.2.(a) provides: "The Department of Health and Human Services shall work with long-term care providers and advocates for the elderly and the mentally ill to study issues concerning the care of mentally ill individuals residing in long-term care facilities. The study shall include:

"(1) Examining whether current State statutes and Departmental rules adequately address the populations served by long-term care facilities.

"(2) Exploring the development of separate licensure categories within the adult care home and nursing home designations to address the various populations being served.

"(3) Examining adult care home rules to determine whether they are easy to understand, attainable under current staffing patterns, give appropriate guidance to facility operators according to the needs and characteristics of residents served, support residents' freedom of choice, and whether they support the autonomy, dignity, and independence philosophy of assisted living.

"(4) Determining the most effective way to identify mentally ill individuals that have mental health treatment needs.

"(5) Examining the criteria for admission of mentally ill individuals to long-term care facilities to ensure that the health and safety of all residents are safeguarded.

"(6) Providing recommendations for improving the quality of care for mentally ill individuals in adult care homes and nursing homes including the potential cost associated with implementing the recommendations.

"(7) Identifying specific problems that exist due to mixing aging and mentally ill populations."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Article 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-262. Department of Correction — functions.

(a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders, including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The State Department of Correction and Commission of Correction,
(2) Repealed by Session Laws 1999-423, s. 8, effective July 1, 1999.
(3) The State Probation Commission,
(4) The State Board of Paroles,
(5) The Interstate Agreement on Detainers, and
(6) The Uniform Act for Out-of-State Parolee Supervision.

(c) The Department shall establish within the Division of Community Corrections a program of Intensive Supervision. This program shall provide intensive supervision for probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5).

(d) The Department shall establish a Substance Abuse Program. This Program shall include an intensive term of inpatient treatment, normally four to six weeks, for alcohol or drug addiction in independent, residential facilities for approximately 100 offenders per facility.

(e) The Department, in consultation with the Domestic Violence Commission, and in accordance with established best practices, shall establish a domestic violence treatment program for offenders sentenced to a term of imprisonment in the custody of the Department and whose official record includes a finding by the court that the offender committed acts of domestic violence.

The Department shall ensure that inmates, whose record includes a finding by the court that the offender committed acts of domestic violence, complete a domestic violence treatment program prior to the completion of the period of incarceration, unless other requirements, deemed critical by the Department, prevent program completion. In the event an inmate does not complete the program during the period of incarceration, the Department shall document, in the inmate's official record, specific reasons why that particular inmate did not or was not able to complete the program. (1973, c. 1262, s. 4; 1983, c. 682, s. 1; 1987, c. 479; c. 738, s. 111(a); 1989 (Reg. Sess., 1990), c. 994; 1997-57, s. 1; 1999-423, s. 8; 2001-487, s. 47(f); 2004-186, s. 1.2.)

Effect of Amendments. — Session Laws 2004-186, s. 1.2, effective December 1, 2004, and applicable to offenses committed on or after that date, added subsection (e).

§ 143B-262.5. Security Staffing.

Editor's Note. —

Session Laws 2003-284, s. 16.4(a)-(c), as amended by Session Laws 2004-124, s. 17.2, provides: "(a) The Department of Correction shall conduct annual security staffing postaudits of each prison.

"(b) The Department of Correction shall annually update the security staffing relief formula. Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training.

"(c) The Department of Correction shall report on its progress in implementing the staffing recommendations of the National Institute of Corrections to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1, 2005. The report shall include a status report on the implementation of a centralized postaudit control system and the automation of leave records. The report shall also provide an updated staffing relief formula and the methodology used to develop the updated formula."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Part 3. Parole Commission.

§ 143B-266. Post-Release Supervision and Parole Commission — creation, powers and duties.

Editor's Note. —

Session Laws 2003-284, s. 16.20, as amended by Session Laws 2004-124, s. 17.9, provides: "The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

"(1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the current fiscal year and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole. The report should also include a more specific analysis of those inmates who were parole-eligible and assigned to minimum custody classification but not released;

"(2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and

"(3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2003-2004 fiscal year and by the end of each of the next five fiscal years, beginning with the 2004-2005 fiscal year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Article 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273.15. Funding formula.

Editor's Note. —

Session Laws 2003-284, s. 16.16 (a) through (d), as amended by Session Laws 2004-124, s. 17.11, provides: "(a) It is the intent of the General Assembly that State Criminal Justice Partnership Program funds not be used to fund case manager positions when those services can be reasonably provided by Division of Community Corrections personnel or by the Treatment Alternatives to Street Crime (TASC) Program in the Department of Health and Human Services.

"(b) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

"(c) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

"(d) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

"(1) The amount of funds carried over from the prior fiscal year;

"(2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;

"(3) Any counties the Department anticipates will submit requests for new implementation grants;

"(4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;

"(5) An analysis of offender participation data received, including data on each program's utilization and capacity;

"(6) An analysis of comparable programs, prepared by the Research and Planning Division of the Department of Correction, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards; and

"(7) An evaluation of Criminal Justice Partnership programs based upon evaluation standards designed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Department of Correction, Division of Research and Planning.

"(e) Notwithstanding the provisions of G.S. 143B-273.15, funding to programs for the 2004-2005 fiscal year shall be established according to the amounts appropriated for the 2003-2004 fiscal year. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, in consultation with the Sentencing and Policy Advisory Commission and the Department of Correction, Division of Research and Planning, shall review the Criminal Justice Partnership Program funding formula and recommend any necessary changes in that formula to the 2005 General Assembly."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§ 143B-279.1. Department of Environment and Natural Resources — creation.

Expand One-Stop Permit Assistance Pilot Program Statewide. — Session Laws 2004-124, s. 12.12(a), enacted G.S. 143B-279.12, establishing a one-step environmental permit application and tracking system.

Session Laws 2004-124, s. 12.12(b) and (c) provide: "The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 for those environmental permits that were subject to this pilot program, and the provisions of G.S. 143B-12 [G.S. 143B-279.12], as enacted by subsection (a) of this section, shall apply to this statewide program.

"Any positions that were used by the Department of Environment and Natural Resources to staff the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 shall be used for the 2004-2005 fiscal year to staff the statewide one-stop environmental permit application assistance and tracking system program under G.S. 143B-279.12, as enacted in subsection (a) of this section. The Department of Environment and Natural Resources shall use available funds for the 2004-2005 fiscal year to continue and support these positions, and the Department of Environment and Natural Resources shall use funds appropriated in this act to the Department only for the purposes of implementing the statewide one-stop environmental permit application assistance and tracking system and establishing and supporting four positions to staff this statewide program for the 2004-2005 fiscal year."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 143B-279.12. One-stop permits for certain environmental permits.

(a) The Department of Environment and Natural Resources shall establish a one-stop environmental permit application assistance and tracking system program for all its regional offices. The Department shall provide to each person who submits an application for any environmental permit subject to this section to any regional office a time frame within which that applicant may expect a final decision regarding the issuance or denial of the permit. The Department shall identify the environmental permits that are subject to this section. The procedure regulating the time frame estimates and sanction for failing to honor the time frame shall be as set out in subsections (b) and (c) of this section.

(b) Upon receipt of a complete application for an environmental permit, the Department of Environment and Natural Resources shall provide to the applicant a good faith estimate of the date by which the Department expects to make the final decision of whether to issue or deny the permit.

(c) Unless otherwise provided by law, when an applicant has provided to the Department of Environment and Natural Resources the information and documentation required and requested by the Department and the Department fails to issue or deny the permit within 60 days of the date projected by

the Department for the final decision of whether to issue or deny the permit, the permit shall be automatically granted to the applicant. This subsection does not apply when an applicant submits a substantial amendment to its application after the Department has provided the applicant the projected time frame as required by this section. This subsection does not apply when an applicant agrees to receive a final decision from the Department more than 60 days from the date projected by the Department under subsection (b) of this section.

(d) The Department of Environment and Natural Resources shall track the time required to process each complete environmental permit application that is subject to this section. The Department shall compare the time in which the permit was issued or denied with the projected time frame provided to the applicant by the Department as required by this section. The Department shall identify each permit that was issued or denied more than 90 days after receipt of a complete application by the Department and shall document the reasons for the delayed action.

(e) No later than October 1, 2004, and annually thereafter, the Department of Environment and Natural Resources shall report to the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission the number of environmental permits subject to this section that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as required by this section. Based on the data gathered under this subsection, the Department shall include in its annual report recommendations regarding permit time frames for all major permits issued by the Department.

(f) The Department may adopt temporary rules to implement this section. (2004-124, s. 12.12(a).)

Expand One-Stop Permit Assistance Pilot Program Statewide. — Session Laws 2004-124, which enacted this section, in ss. 12.12(b) and (c) provide: "(b) The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 for those environmental permits that were subject to this pilot program, and the provisions of G.S. 143B-12 [G.S. 143B-279.12], as enacted by subsection (a) of this section, shall apply to this statewide program.

"(c) Any positions that were used by the Department of Environment and Natural Resources to staff the one-stop environmental permit application assistance and tracking system pilot project established under Section 13.7 of S.L. 2000-67 shall be used for the 2004-2005 fiscal year to staff the statewide one-stop environmental permit application assistance and tracking system program under G.S. 143B-279.12, as enacted in subsection (a) of this section. The Department of Environment and Natural Resources shall use available funds for the 2004-2005 fiscal year to continue and support these positions, and the Department of Environment and Natural Resources shall use funds appropriated in this act to the Department only for the purposes of implementing the statewide one-stop environmental permit application assistance and tracking system and establishing and supporting four positions to staff this statewide program for the 2004-2005 fiscal year."

Editor's Notes. — Session Laws 2004-124, s. 12.12(d), made this section effective January 1, 2005.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Part 4. Environmental Management Commission.

§ 143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

Editor's Note. — Session Laws 2004-176, s. 5, provides: "The Commission shall consider the factors set out in G.S. 143B-282.1 in any decision as to whether to assess a civil penalty for failure to obtain a permit pursuant to G.S. 143-215.6A(2) against the owner or operator of a dry litter poultry facility that becomes subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) between 12 April 2003 and 1 January 2005. In determining whether the violation was willful or intentional, the Commission shall consider whether the facility developed an animal waste management plan pursuant to G.S. 143-215.10C(f) based on available guidance on phosphorus and whether the facility complied with its animal waste management plan."

Part 5D. Marine Fisheries Commission.

§ 143B-289.52. Marine Fisheries Commission — powers and duties.

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
   a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
   b. Seasons for taking fish.
   c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221.1.

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(13) To adopt rules to define fishing gear as either recreational gear or commercial gear.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery.

(e) The Commission may adopt rules to implement or comply with a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan.

(f) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(g) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

(h) Neither the Commission nor the Department may disclose personal information provided by an applicant for a license issued under Article 14A or 14B of Chapter 113 of the General Statutes. (1997-400, ss. 2.1, 2.2; 1997-443, s. 11A.123; 1998-217, s. 18(a); 1998-225, ss. 1.3, 1.4, 1.5; 2001-474, s. 32; 2003-154, s. 3; 2004-187, ss. 7, 8.)

Editor's Note. —

Session Laws 2004-187, s. 14, is a severability clause.

Effect of Amendments. —

Session Laws 2004-187, ss. 7 and 8, effective August 17, 2004, added subdivision (a)(13) and subsection (h).

Article 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

CASE NOTES

Applied in Viar v. N.C. DOT, 162 N.C. App. 362, 590 S.E.2d 909, 2004 N.C. App. LEXIS 184 (2004).

ARTICLE 9.

Department of Administration.

Part 7. Youth Councils.

§ 143B-387.1. North Carolina Youth Advocacy and Involvement Fund.

The North Carolina Youth Advocacy and Involvement Fund is created as a special and nonreverting fund. Conference registration fees, gifts, donations, or contributions to or for the North Carolina Youth Legislative Assembly (YLA) and the North Carolina Students Against Destructive Decisions (SADD) programs shall be credited to the Fund.

The Fund shall be used solely to support planning and execution of the YLA and SADD programs. The Department shall maintain separate cost centers for each program. (2000-67, s. 23.1; 2004-124, s. 19.10.)

Editor's Note. —

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 19.10, effective July 1, 2004, rewrote the section; and rewrote the section heading, which formerly read "North Carolina Youth Legislative Assembly Fund."

Part 25. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of Administration. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, one of whom shall be a State employee;

(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;

(4) The State Treasurer, ex officio; and

(5) The Secretary of Administration, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(*l*) All clerical and other services and personnel required by the Board shall be supplied by the Secretary of Administration, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The Secretary of Administration is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein. (1983, c. 559, s. 1; 1991, c. 389, s. 2; 1995, c. 490, s. 40; 1999-456, s. 42; 2004-137, s. 1.)

Effect of Amendments. — Session Laws 2004-137, s. 1, effective July 1, 2004, added "of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State" at the end of second sentence of subsection (a); deleted "State" preceding "employees" in the first sentence of subsection (h); and, effective January 1, 2005, inserted subsection (h1).

Article 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-427. Department of Commerce — creation.

Editor's Note. —

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Study Commission on Economic Development Infrastructure. — Session Laws 2004-161, ss. 49.1 to 49.8, created the Study Commission on Economic Development Infrastructure.

Session Laws 2004-161, s. 49.4, provides: "The Commission shall examine the existing infrastructure for the delivery of economic development, including the many entities involved in economic development. The Commission shall develop a plan to restructure and consolidate the infrastructure for the delivery of economic development to improve its organization and effectiveness. The Commission shall specifically examine the role of the following in the delivery of economic development:

"(1) The Department of Commerce.

"(2) The regional councils of government created pursuant to G.S. 160A-470.

"(3) The Economic Development Board created pursuant to G.S. 143B-434. The Commission shall consider whether the Economic Development Board, which is currently advisory in nature, should be reconstituted and given responsibility for policy development or regulatory authority.

"(4) The regional planning and economic development commissions created pursuant to Article 2 of Chapter 158 of the General Statutes. The Commission shall consider whether regional planning and economic development commissions should be given greater responsibility for marketing and business recruitment."

Session Laws 2004-161, s. 49.7, provides: "The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2005 General Assembly upon its convening. The

Commission shall terminate upon the convening of the 2005 General Assembly."

§ 143B-431. Department of Commerce — functions.

(a) The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. Savings Institutions Division,
g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
h. Credit Union Commission,
i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
l. The North Carolina State Ports Authority,

all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.

(b) The Department of Commerce is authorized to establish and provide for the operation of North Carolina nonprofit corporations for any of the following purposes:

(1) To aid the development of small businesses.
(2) To achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.
(3) To acquire options and hold options for the purchase of land under G.S. 143B-437.02.

(b1) The Department of Commerce is authorized to contract for the preparation of proposals and reports in response to requests for proposals for location or expansion of major industrial projects.

(c) The Department of Commerce shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

(1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.

(2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service, and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

(3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of

1974 and amendments thereto. The Department may enter into loan guarantee agreements in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees and grants under this subdivision the Department shall take into consideration project applications, geographic diversity and regional balance in the entire community development block grant program. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

a. The minimum size of the Section 108 Loan Guarantee is (i) seven hundred fifty thousand dollars ($750,000) for a project supported by an individual local government and (ii) two hundred fifty thousand dollars ($250,000) for a project supported as part of a loan pool; and the maximum size is five million dollars ($5,000,000) per project.
b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.
c. The project has ten percent (10%) equity from the corporation, partnership, or sponsoring party. "Equity" means cash, real estate, or other hard assets contributed to the project and loans that are subordinated in payment and collateral during the term of the Section 108 Loan Guarantee.
d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring entity, except for projects involving Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code. Collateral on the loan must be sufficient to cover outstanding debt obligations.
e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.
f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees.

(e) The Department of Commerce may establish a clearinghouse for State business license information and shall perform the following duties:

(1) Establish a license information service detailing requirements for establishing and engaging in business in the State.

(2) Provide the most recent forms and information sheets for all State business licenses.

(3) Prepare, publish, and distribute a complete directory of all State licenses required to do business in North Carolina.

(4) Upon request, the Department shall assist a person as provided below:

a. Identify the type and source of licenses that may be required and the potential difficulties in obtaining the licenses based on an informal review of a potential applicant's business at an early stage in its planning. Information provided by the Department is for guidance purposes only and may not be asserted by an applicant as a waiver or release from any license requirement. However, an applicant who uses the services of the Department as provided in this subdivision, and who receives a written statement identifying required State business licenses relating to a specific business activity, shall not be assessed a penalty for failure to obtain any State business license which was not identified, provided that the applicant submits an application for each such license within 60 days after written notification by the Department or the agency responsible for issuing the license.

b. Arrange an informal conference between the person and the appropriate agency to clarify licensing requirements or standards, if necessary.

c. Assist in preparing the appropriate application and supplemental forms.

d. Monitor the license review process to determine the status of a particular license. If there is a delay in the review process, the Department may demand to know the reasons for the delay, the action required to end the delay, and shall provide this information to the applicant. The Department may assist the applicant in resolving a dispute with an agency during the application process. If a request for a license is refused, the Department may explain the recourse available to the person under the Administrative Procedure Act.

(5) Collaborate with the business license coordinator designated in State agencies in providing information on the licenses and regulatory requirements of the agency, and in coordinating conferences with applicants to clarify license and regulatory requirements.

Each agency shall designate a business license coordinator. The coordinator shall have the following responsibilities:

a. Provide to the Department the most recent application and supplemental forms required for each license issued by the agency, the most recent information available on existing and proposed agency rules, the most recent information on changes or proposed changes in license requirements or agency rules and how those changes will affect the business community, and agency publications that would be of aid or interest to the business community.

b. Work with the Department in scheduling conferences for applicants as provided under this subsection.

c. Determine, upon request of an applicant or the Department, the status of a license application or renewal, the reason for any delay in the license review process, and the action needed to end the delay; and to notify the applicant or Department, as appropriate, of those findings.

d. Work with the Department or applicant, upon request, to resolve any dispute that may arise between the agency and the applicant during the review process.

e. Review agency regulatory and license requirements and to provide a written report to the Department that identifies the regulatory and licensing requirements that affect the business community; indicates which, if any, requirements should be eliminated, modified, or consolidated with other requirements; and explains the need for continuing those requirements not recommended for elimination.

f. Report, on a quarterly basis, to the Department on the number of licenses issued during the previous quarter on a form prescribed by the Department. (1977, c. 198, s. 1; 1987, c. 214; 1989, c. 76, s. 25; c. 751, s. 2; 1991, c. 689, s. 153; 1991 (Reg. Sess., 1992), c. 959, s. 49; 1995, c. 310, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 1; 2001-193, s. 10; 2004-124, ss. 6.26(c), 6.26(d), 13.9A(c); 2004-199, s. 27(c).)

Editor's Note. —

Session Laws 2004-199, s. 27(c), repealed G.S. 143B-431(a)(2)(i). The apparent intent of the General Assembly was to repeal G.S. 143B-431(a)(2)i., which has been set out as repealed at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 13.9A(d), provides: "The Department of Commerce shall consider hiring the personnel in the Business License Information Office of the Department of the Secretary of State to conduct the business license information functions in the Department of Commerce."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, ss. 6.26(c), (d) and 13.9A(c), effective July 1, 2004, rewrote subsection (b); inserted subsection (b1); and added subsection (e).

Session Laws 2004-199, s. 27(c), effective August 17, 2004, repealed subdivision (a)(2)i.

§ 143B-432.1. Department of Commerce — Small Business Ombudsman.

A Small Business Ombudsman is created in the Department of Commerce to work with small businesses to ensure they receive timely answers to questions and timely resolution of issues involving State government. The Small Business Ombudsman shall have the authority to make inquiry of State agencies on behalf of a business, to receive information concerning the status of a business's inquiry, and to convene representatives of various State agencies to discuss and resolve specific issues raised by a business. The Small Business Ombudsman shall also work with the small business community to identify problems in State government related to unnecessary delays, inconsistencies between regulatory agencies, and inefficient uses of State resources. (2004-124, s. 13.9A(e).)

Editor's Note. — Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Session Laws 2004-124, s. 33.6, makes this section effective July 1, 2004.

§ 143B-433. Department of Commerce — organization.

The Department of Commerce shall be organized to include:

(1) The following agencies:

a. The North Carolina Alcoholic Beverage Control Commission.
b. The North Carolina Utilities Commission.
c. The Employment Security Commission.
d. The North Carolina Industrial Commission.
e. State Banking Commission.
f. Savings Institutions Division.
g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
h. Credit Union Commission.
i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17, 2004.
j. The North Carolina Mutual Burial Association Commission.
k. North Carolina Cemetery Commission.
l. The North Carolina Rural Electrification Authority.
m. Repealed by Session Laws 1985, c. 757, s. 179(d).
n. North Carolina Science and Technology Research Center.
o. The North Carolina State Ports Authority.
p. North Carolina National Park, Parkway and Forests Development Council.
q. Economic Development Board.
r. Labor Force Development Council.
s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective September 30, 2000.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

(2) Those agencies which are transferred to the Department of Commerce including the:

a. Community Assistance Division.
b. Community Development Council.
c. Employment and Training Division.
d. Job Training Coordinating Council.

(3) Such divisions as may be established pursuant to Article 1 of this Chapter. (1977, c. 198, s. 1; 1979, c. 668, s. 2; 1981, c. 412, ss. 4, 5; 1983, c. 899, s. 1; 1985, c. 757, s. 179(d); 1989, c. 76, s. 26; c. 727, s. 8; c. 751, s. 7(28); 1991 (Reg. Sess., 1992), c. 959, s. 52; 1993, c. 321, s. 313(b); 1998-217, s. 19; 2000-140, s. 76(j); 2001-193, s. 11; 2004-199, s. 27(d).)

Editor's Note. —
Session Laws 2004-199, s. 27(d), repealed G.S. 143B-433(1)(i). The apparent intent of the General Assembly was to repeal G.S. 143B-433(1)i., which has been set out as repealed at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2004-199, s. 27(d), effective August 17, 2004, repealed subdivision (1)i.

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

Editor's Note. —
Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 143B-437.01. Industrial Development Fund.

Editor's Note. —

Session Laws 2004-124, s. 12.8(b), provides: "Notwithstanding the provisions of G.S. 143B-437.01, the Department of Commerce shall transfer from the Industrial Development Fund to the Department of Environment and Natural Resources the sum of seven hundred seventy-six thousand six hundred eighty dollars ($776,680) to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2004-2005 fiscal year and to match the federal grant moneys authorized by Title VI of the federal Water Quality Act of 1987 for the 2004-2005 fiscal year. The Industrial Development Fund is established by G.S. 143B-437.01."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 143B-437.02. Site infrastructure development.

(a) Findings. — The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this section that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this section is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina and this section will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this section is to stimulate economic activity and to create new jobs within the State.

(b) Fund. — The Site Infrastructure Development Fund is created as a restricted reserve in the Department of Commerce. Funds in the fund do not revert but remain available to the Department for these purposes. The Department may use the funds in the fund only for the following purposes:

(1) For site development in accordance with this section.

(2) To acquire options and hold options for the purchase of land in accordance with subsection (m) of this section.

(c) Definitions. — The definitions in G.S. 143B-437.51 apply in this section. In addition, the following definitions apply in this section:

(1) Department. — The Department of Commerce.

(2) Site development. — Any of the following:

a. A restricted grant or a forgivable loan made to a business to enable the business to acquire land, improve land, or both.

b. A grant to one or more State agencies or nonprofit corporations to enable the grantees to acquire land, improve land, or both and to lease the property to a business.

c. A grant to one or more local government units to enable the units to acquire land, improve land, or both and to lease the property to a business.

(d) Eligibility. — To be eligible for consideration for site development for a project, a business must meet both of the following conditions:

(1) The business will invest at least one hundred million dollars ($100,000,000) of private funds in the project.

(2) The project will employ at least 100 new employees.

(e) Health Insurance. — A business is eligible for consideration for site development under this section only if the business provides health insurance for all of the full-time employees of the project with respect to which the application is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a contract for site development under this section is in effect, the business must provide the Department of Commerce a certification that the business continues to provide health insurance for all full-time employees of the project governed by the contract. If the business ceases to provide health insurance to all full-time employees of the project, Department shall provide for reimbursement of an appropriate portion of the site development funds provided to the business.

(f) Safety and Health Programs. — In order for a business to be eligible for consideration for site development under this section, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127.

(g) Environmental Impact. — A business is eligible for consideration for site development under this part only if the business certifies that, at the time of the application, the business has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-

215.6B(d). The Secretary of Environment and Natural Resources must notify the Department of Commerce annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(h) Selection. — The Department of Commerce shall administer the selection of projects to receive site development. The selection process shall include the following components:

(1) Criteria. — The Department of Commerce must develop criteria to be used to identify and evaluate eligible projects for possible site development.

(2) Initial evaluation. — The Department must evaluate major competitive projects to determine if site development is merited and to determine whether the project is eligible and appropriate for consideration for site development.

(3) Application. — The Department must require a business to submit an application in order for a project to be considered for site development. The Department must prescribe the form of the application, the application process, and the information to be provided, including all information necessary to evaluate the project in accordance with the applicable criteria.

(4) Committee. — The Department must submit to the Economic Investment Committee the applications for projects the Department considers eligible and appropriate for consideration for site development. In evaluating each application, the Committee must consider all of the factors set out in Section 2.1(b) of S.L. 2002-172.

(5) Findings. — In order to recommend a project for site development, the Committee must make all of the following findings:

a. The conditions for eligibility have been met.

b. Site development for the project is necessary to carry out the public purposes provided in subsection (a) of this section.

c. The project is consistent with the economic development goals of the State and of the area where it will be located.

d. The affected local governments have participated in recruitment and offered incentives in a manner appropriate to the project.

e. The price and nature of any real property to be acquired is appropriate to the project and not unreasonable or excessive.

f. Site development under this section is necessary for the completion of the project in this State.

(6) Recommendations. — If the Committee recommends a project for site development, it must recommend the amount of State funds to be committed, the preferred form and details of the State participation, and the performance criteria and safeguards to be required in order to protect the State's investment.

(i) Agreement. — Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for site development, the Department shall enter into an agreement to provide site development within available funds for a project recommended by the Committee. Each site development agreement is binding and constitutes a continuing contractual obligation of the State and the business. The site development agreement must include all of the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department to secure the State's investment. Each site development agreement must contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Nothing in this section constitutes or authorizes a guarantee or assumption by

the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Department of Administration and the Attorney General's Office in preparing the documentation for the site development agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section must be signed personally by the Attorney General.

(j) Safeguards. — To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives State-funded site development must agree to meet performance criteria to protect the State's investment and assure that the projected benefits of the project are secured. The performance criteria to be required shall include creation and maintenance of an appropriate level of employment and investment over the term of the agreement and any other criteria the Department considers appropriate. The agreement must require the business to repay or reimburse an appropriate portion of the State funds expended for the site development, based on the extent of any failure by the business to meet the performance criteria. The agreement must provide a method for securing these payments from the business, such as structuring the site development as a conditional grant, a forgivable loan, or a revocable lease.

(k) Monitoring and Reports. — The Department is responsible for monitoring compliance with the performance criteria under each site development agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

Within two months after the end of each calendar quarter, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Site Infrastructure Development Program. This report shall include a listing of each agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the site development incentive expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding quarter. The Department shall publish this report on its web site and shall make printed copies available upon request.

(m) Options. — The Department of Commerce may acquire options and hold options for the purchase of land for an anticipated industrial site if all of the following conditions are met:

(1) The options are necessary to provide a large, regional industrial site that cannot be assembled by local governments.

(2) The acquisition of the options is approved by the Committee. (2003-435, 2nd Ex. Sess., s. 1; 2004-124, ss. 6.26(a), 6.26(b).)

Editor's Note. — Session Laws 2003-435, 1st Ex. Sess., s. 1.5, made this section effective December 16, 2003.

Session Laws 2003-435, 1st Ex. Sess., s. 1.2(a), provides: "There is appropriated from the General Fund to the Site Infrastructure Development Fund in the Department of Commerce the sum of twenty-four million dollars ($24,000,000) for the 2003-2004 fiscal year to be used only in accordance with G.S. 143B-437.02, as enacted by this part."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 6.26(a) and (b), effective July 1, 2004, rewrote subsection (b); and added subsection (m).

§ 143B-437.06: Repealed by Session Laws 2004-124, s. 13.6(c) effective July 1, 2004.

Editor's Note. — Session Laws 2002-126, s. 8.3, effective July 1, 2002, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Part 2F. e-NC Initiative.

(This part has a delayed repeal date. See notes.)

§ 143B-437.47. (This part has a delayed repeal date. See notes.) Powers, duties, and goals of the Authority.

(a) Powers. — The Authority shall have the following powers:

(1) To employ, contract with, direct, and supervise all personnel and consultants.

(2) To apply for, accept, and utilize grants, contributions, and appropriations in order to carry out its duties and goals as defined in this Part.

(3) To enter into contracts and to provide support and assistance to local governments, nonprofit entities, for-profit entities, regional partnerships, and business and technology centers in carrying out its duties and goals under this Part.

(4) To review and recommend changes in all laws, rules, programs, and policies of this State or any agency or subdivision thereof to further the goals of rural and distressed urban area Internet access.

(b) Duties. — The Authority shall have the following duties:

(1) To monitor and safeguard the investments made and contracts negotiated by the Rural Internet Access Authority in carrying out its functions under S.L. 2000-149 until such time as all contracts negotiated by the RIAA are complete.

(2) To maintain a web site with accurate, current, and complete information about the availability of present telecommunications and Internet services with periodic updates on the deployment of new telecommunications and broadband Internet services, as well as information on public access sites and digital literacy training programs in North Carolina.

(3) To continue efforts to ensure that high-speed broadband Internet access remains available to every citizen of North Carolina at affordable prices in rural counties and urban distressed areas.

(4) To attract and coordinate funding of federal, foundation, and corporate dollars for regional and Statewide technology initiatives and to assist local government, including e-communities (the 85 rural counties and the Eastern Band of the Cherokee who have completed the e-communities process), in obtaining grants to further enhance their technology infrastructure.

(5) To propose funding from other appropriate sources for incentives without technology bias for the private sector to make necessary investments to achieve the Authority's goals and objectives.

(6) To provide leadership, coordination, and support for grassroots efforts targeting technology-based economic development.

(7) To provide leadership, coordination, and support for telecommunications policy assessment as it relates to providing high-speed Internet access in rural counties and urban distressed areas.

(8) To promote collaborative technology projects, programs, and activities that reflect comprehensive efforts to develop technology-based economic development initiatives that utilize high-speed broadband Internet as a platform.

(9) To encourage replicable and scalable Internet applications in government, health care, education, and business that will assist the communities of North Carolina to remain competitive with respect to knowledge of, and use of, as well as affordable access to the high-speed Internet.

(10) To promote the use of constitutionally valid protective actions to limit the electronic distribution of material that is considered obscene, as defined by G.S. 14-190.1(b), to children via the Internet.

(c) Reserved for future codification purposes.

(d) Limitations. — The Authority shall not have the power of eminent domain or the power to levy any tax, or to impose any charge, surcharge, or fees on telephone or telecommunications services.

(e) Reports. — The Authority shall submit quarterly reports to the Governor, the Joint Legislative Oversight Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission. (2003-425, s. 1; 2004-129, s. 45A.)

Effect of Amendments. — Session Laws 2004-129, s. 45A, effective July 1, 2004, substituted "Legislative Oversight" for "Select" in subsection (e).

Part 2G. Job Development Investment Grant Program.

§ 143B-437.51. Definitions.

The following definitions apply in this Part:

(1) Agreement. — A community economic development agreement under G.S. 143B-437.57.

(2) Base years. — The first 24 months following the date set by the Committee for performance to begin under the agreement.

(3) Business. — A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. — The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. — A position created by a business and filled by a new full-time employee in this State during the base years or in subsequent years of a grant.

(5a) Enterprise tier. — The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. — A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. — A full-time employee who represents a net increase in the number of the business's employees statewide. The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.

(8) Overdue tax debt. — Defined in G.S. 105-243.1.

(9) Related member. — Defined in G.S. 105-130.7A.

(10) Withholdings. — The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.1.)

Effect of Amendments. — Session Laws 2003-435, 2nd Ex. Sess., s. 2.1, effective December 16, 2003 rewrote subdivision (2) and added subdivision (5a).

§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. — There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. — The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. — The maximum amount of total annual liability for grants for agreements entered into in any single calendar year may not exceed fifteen million dollars ($15,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. — For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The designation contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.2; 2004-124, ss. 32G.1(b), 32G.1(c), 32G.1(e).)

Editor's Note. —

Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 32G.1(i), provides: "The Chairs of the Finance Committees of the House of Representatives and the Senate shall conduct a comprehensive, systematic study of the Job Development Investment Grant program. The General Assembly shall use funds available to conduct this study and may hire a consultant to conduct the study. The study shall be completed and submitted to the full 2005 General Assembly no later than April 1, 2005. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

"(5) Any other matter the General Assembly finds relevant to a study of the program."

Session Laws 2004-124, s. 32G.1(j), provides that s. 32G.1(b) and (e) are effective July 20, 2004, while s. 32G.1(c) is effective January 1, 2004, and applies to agreements entered into on or after that date.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2003-435, 2nd Ex. Sess., s. 2.2, effective December 16, 2003, added subsection (d).

Session Laws 2004-124, s. 32G.1(b), (c), and (e), substituted "25" for "15" in subsection (b); substituted "fifteen million dollars ($15,000,000)" for "ten million dollars ($10,000,000)" in subsection (c); and inserted "143B-437.51(5), 143B-437.57(a)(11)" preceding "143B-437.57(a)(11)" in subsection (d). See editor's note for effective dates and applicability.

§ 143B-437.53. Eligible projects.

(a) Minimum Number of Eligible Positions. — A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

Enterprise Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	10
Tier Three	10

Tier Four	20
Tier Five	20

(b) Ineligible Businesses. — A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or club is not eligible for a grant under this Part.

(c) Health Insurance. — A business is eligible for a grant under this Part only if the business provides health insurance for all of the full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.58 a certification that the business continues to provide health insurance for all full-time employees of the project with respect to which the grant is made. If the business ceases to provide health insurance to all full-time employees of the project with respect to which a grant is made, the Committee shall amend or terminate the agreement as provided in G.S. 143B-437.59.

(d) Repealed by Session Laws 2003-435, 2nd Ex. Sess., s. 2.3, effective December 16, 2003.

(e) Safety and Health Programs. — In order for a business to be eligible for a grant under this Part, the business must have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations with respect to the location for which the grant is made. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, Ex. Sess., s. 2.3.)

Effect of Amendments. — Session Laws 2003-435, 2nd Ex. Sess., s. 2.3, effective December 16, 2003, repealed subsection (d).

§ 143B-437.54. Economic Investment Committee established.

(a) Membership. — The Economic Investment Committee is established. The Committee consists of the following members:

(1) The Secretary of Commerce.
(2) The Secretary of Revenue.
(3) The Director of the Office of State Budget and Management.
(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
(5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The members of the Committee appointed by the General Assembly may not be members of the General Assembly. The members of the Committee ap-

pointed by the General Assembly serve two-year terms that begin upon appointment.

(b) Decision Required. — The Committee may act only upon a decision of three of its five members.

(c) Conflict of Interest. — It is unlawful for a current or former member of the Committee to, while serving on the Committee or within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that is awarded a grant under this Part or under G.S. 143B-437.02 while the member is serving on the Committee. Violation of this subsection is a Class 1 misdemeanor. In addition to the penalties imposed under G.S. 15A-1340.23, the court shall also make a finding as to what compensation was received by the defendant for services in violation of this section and shall order the defendant to forfeit that compensation.

If a person is convicted under this section, the person shall not provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part or under G.S. 143B-437.02 while the member was serving on the Committee until two years after the person's conviction under this section.

(d) Public Notice. — At least 20 days before the effective date of any criteria or nontechnical amendments to criteria, the Committee must publish the proposed criteria on the Department of Commerce's web site and provide notice to persons who have requested notice of proposed criteria. In addition, the Committee must accept oral and written comments on the proposed criteria during the 15 business days beginning on the first day that the Committee has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

(e) Sunshine. — Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes and any applicable provisions of the General Statutes protecting confidential information. (2002-172, s. 2.1(a); 2003-416, ss. 2, 25; 2003-435, 2nd Ex. Sess., ss. 1.4, 2.4.)

Effect of Amendments. — Session Laws 2003-435, 2nd Ex. Sess., ss. 1.4 and 2.4, effective December 16, 2003, twice inserted "or under G.S. 143B-437.02" following "under this Part" in subsection (c); and rewrote subsection (d).

§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.
(4) The amount of other financial assistance the project will receive from the State or local governments.
(5) The total dollar investment the business is making in the project.
(6) Whether the project utilizes existing infrastructure and resources in the community.
(7) Whether the project is located in a development zone.
(8) The number of eligible positions that would be filled by residents of a development zone.
(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded.

(c) The grant may be based only on eligible positions created during the base years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an enterprise tier four or five area.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible position may not exceed six thousand five hundred dollars ($6,500) in any year. (2002-172, s. 2.1(a); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 2.5.)

Effect of Amendments. — Session Laws 2003-435, 2nd Ex. Sess., s. 2.5, effective December 16, 2003, rewrote subsection (b).

§ 143B-437.57. Community economic development agreement.

(a) Terms. — Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.
(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
(4) The amount of the grant based on a percentage of withholdings.
(5) A method for determining the number of new employees hired during a grant year.
(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.

(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.

(17) A provision encouraging the business to hire North Carolina residents.

(18) A provision encouraging the business to use the North Carolina State Ports.

(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible position may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services.

(b) Approval of Attorney General. — The Attorney General shall review the terms of all proposed agreements entered into by the Committee. To be effective against the State, an agreement entered into under this Part must be signed personally by the Attorney General.

(c) Agreement Binding. — A community economic development agreement is a binding obligation of the State and is not subject to State funds being appropriated by the General Assembly. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, ss. 32G.1(f), 32G.1(g).)

Editor's Note. —

Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 32G.1(i), provides: "The Chairs of the Finance Committees of the House of Representatives and the Senate shall conduct a comprehensive, systematic study of the Job Development Investment Grant program. The General Assembly shall use funds available to conduct this study and may hire a consultant to conduct the study. The study shall be completed and submitted to the full 2005 General Assembly no later than April 1, 2005. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

"(5) Any other matter the General Assembly finds relevant to a study of the program."

Session Laws 2004-124, s. 32G.1(j), provides that s. 32G.1(f) is effective on and after October 31, 2002, while s. 32G.1(g) is effective July 20, 2004, and applies to agreements entered into on or after that date.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 32G.1(f) and (g), added subdivision (a)(25) and subsection (c). See editor's note for effective dates and applicability.

§ 143B-437.58. Grant recipient to submit records.

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information submitted under this subsection is tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due

at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(d).)

Editor's Note. —

Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 31G.1(i), provides: "The Chairs of the Finance Committees of the House of Representatives and the Senate shall conduct a comprehensive, systematic study of the Job Development Investment Grant program. The General Assembly shall use funds available to conduct this study and may hire a consultant to conduct the study. The study shall be completed and submitted to the full 2005 General Assembly no later than April 1, 2005. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

"(5) Any other matter the General Assembly finds relevant to a study of the program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 32G.1(d), effective October 31, 2002, in subsection (a), substituted "March 1" for "February 1" and deleted "a copy of its State and federal tax returns showing business and nonbusiness income and a" following "submit to the Committee" in the first sentence, and inserted the third and fourth sentences.

§ 143B-437.62. Expiration.

The authority of the Committee to enter into new agreements expires January 1, 2006. (2002-172, s. 2.1(a); 2003-416, s. 2; 2004-124, s. 32G.1(a).)

Editor's Note. —

Session Laws 2004-124, s. 32G.1(h), provides: "It is the intent of the General Assembly that the benefits of a robust and growing economy be shared by all citizens of the State regardless of their geographic location or whether they live in urban, suburban, or rural areas. In striving for balanced economic development throughout the State, the General Assembly has designed a system to identify areas of the State that are most in need of additional economic development and has designed economic development programs to provide for relatively stronger incentives in those areas. In keeping with this policy of balanced economic development, the General Assembly strongly encourages the Department of Commerce and the Economic Investment Committee to give priority consideration under the Job Development Investment Grant program to projects that are located or will locate in less economically developed areas."

Session Laws 2004-124, s. 31G.1(i), provides: "The Chairs of the Finance Committees of the House of Representatives and the Senate shall conduct a comprehensive, systematic study of the Job Development Investment Grant program. The General Assembly shall use funds available to conduct this study and may hire a consultant to conduct the study. The study shall be completed and submitted to the full 2005 General Assembly no later than April 1, 2005. The study shall include an examination of the following:

"(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

"(2) The costs of the program in relation to other State economic development incentive programs.

"(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

"(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

"(5) Any other matter the General Assembly finds relevant to a study of the program."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 32G.1(a), effective July 20, 2004, rewrote the section; and rewrote the section heading, which formerly read "Authority."

§ 143B-437.63. JDIG Program cash flow requirements.

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve Fund established pursuant to G.S. 143-15.3E to the Department of Commerce in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year. (2004-124, s. 6.12(b).)

Editor's Note. — Session Laws 2004-124, s. 33.6, made this section effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Part 2H. One North Carolina Fund.

§ 143B-437.70. Legislative findings and purpose.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the retention and expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.

(4) The enactment of this Part will maintain consistency and accountability in a key economic development program and will ensure that the program benefits the State and its citizens.

(5) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged. (2004-88, s. 1(d).)

Editor's Note. — Session Laws 2004-88, ss. 1(a) through 1(c), provide: "(a) There is appropriated from the General Fund to the One North Carolina Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year. Funds that are unexpended and unencumbered as of the end of the fiscal year do not revert to the General Fund but remain available for these purposes. It is the intent of the General Assembly that there be a recurring annual appropriation to the One North Carolina Fund of ten million dollars ($10,000,000) beginning with the 2006-2007 fiscal year.

"(b) Of the funds appropriated in this section to the One North Carolina Fund, the Department of Commerce may use up to three hundred thousand dollars ($300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2004-2005 fiscal year.

"(c) There is appropriated from the General Fund to the Community Colleges System Office the sum of four million one hundred thousand dollars ($4,100,000) for the 2003-2004 fiscal year for new and expanding industry training. Funds that are unexpended and unencumbered as of the end of the fiscal year do not revert to the General Fund but remain available for these purposes."

Session Laws 2004-88, s. 1(g), made this Part effective June 30, 2004, and not applicable to commitments made under the One North Carolina Industrial Recruitment Competitive Fund prior to July 1, 2004.

§ 143B-437.71. One North Carolina Fund established as a nonreverting account.

(a) Establishment. — The One North Carolina Fund is established as a special revenue fund in the Department of Commerce.

(b) Purposes. — Moneys in the One North Carolina Fund may be allocated only to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses. Moneys in the One North Carolina Fund shall be used for the following purposes only:

(1) Installation or purchase of equipment.

(2) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.

(3) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.

(4) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.

(5) Any other purposes specifically provided by an act of the General Assembly. (2004-88, s. 1(d).)

§ 143B-437.72. Agreements required; disbursement of funds.

(a) Agreements Required. — Funds may be disbursed from the One North Carolina Fund only in accordance with agreements entered into between the State and one or more local governments and between the local government and a grantee business.

(b) Company Performance Agreements. — An agreement between a local government and a grantee business must contain the following provisions:

(1) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location and commitments regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained.
(2) A commitment to provide proof satisfactory to the local government and the State of new jobs created or existing jobs retained and the salary level of those jobs.
(3) A provision that funds received under the agreement may be used only for a purpose specified in G.S. 143B-437.71(b).
(4) A provision allowing the State or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this Part.
(5) A provision establishing the method for determining compliance with the agreement.
(6) A provision establishing a schedule for disbursement of funds under the agreement that allows disbursement of funds only in proportion to the amount of performance completed under the agreement.
(7) A provision requiring recapture of grant funds if a business subsequently fails to comply with the terms of the agreement.
(8) Any other provision the State or the local government finds necessary to ensure the proper use of State or local funds.

(c) Local Government Grant Agreement. — An agreement between the State and one or more local governments shall contain the following provisions:

(1) A commitment on the part of the local government to match the funds allocated by the State. A local match may include cash, fee waivers, in-kind services, the donation of assets, the provision of infrastructure, or a combination of these.
(2) A provision requiring the local government to recapture any funds to which the local government is entitled under the company performance agreement.
(3) A provision requiring the local government to reimburse the State for any funds improperly disbursed or funds recaptured by the local government.
(4) A provision allowing the State access to all records possessed by the local government necessary to ensure compliance with the company performance agreement and with the requirements of this Part.
(5) A provision establishing a schedule for the disbursement of funds from the One North Carolina Fund to the local government that reflects the disbursement schedule established in the company performance agreement.
(6) Any other provision the State finds necessary to ensure the proper use of State funds.

(d) Disbursement of Funds. — Funds may be disbursed from the One North Carolina Fund to the local government only after the local government has demonstrated that the business has complied with the terms of the company performance agreement. The State shall disburse funds allocated under the One North Carolina Fund to a local government in accordance with the disbursement schedule established in the local government grant agreement. (2004-88, s. 1(d).)

§ 143B-437.73. Program guidelines.

The Department of Commerce, in conjunction with the Governor's Office, shall develop guidelines related to the administration of the One North Carolina Fund and to the selection of projects to receive allocations from the

Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

(1) An amendment that corrects a spelling or grammatical error.

(2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment. (2004-88, s. 1(d).)

Editor's Note. — Session Laws 2004-88, s. 1(f), provides: "Program guidelines developed by the Department of Commerce for the One North Carolina Industrial Recruitment Competitive Fund that are in effect when this act becomes effective shall apply to the One North Carolina Fund enacted by this act until guidelines for the One North Carolina Fund are adopted pursuant to G.S. 143B-437.73. Program guidelines for the One North Carolina Fund shall be adopted in accordance with G.S. 143B-437.73 on or before September 1, 2004."

§ 143B-437.74. Reports.

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Fund at the end of each fiscal quarter. The report shall contain information on the commitment, disbursement, and use of funds allocated under the One North Carolina Fund. The report is due no later than one month after the end of the fiscal quarter and must be submitted to the following:

(1) The Joint Legislative Commission on Governmental Operations.

(2) The chairs of the House of Representatives and Senate Finance Committees.

(3) The chairs of the House of Representatives and Senate Appropriations Committees.

(4) The Fiscal Research Division of the General Assembly. (2004-88, s. 1(d).)

Part 3C. Trade Jobs for Success.

§ 143B-438.15. Legislative findings and purpose.

(a) The General Assembly finds that State, national, and global economic conditions and the passage of international trade agreements have impacted the State workforce adversely and resulted in significant losses in the availability of jobs in manufacturing and the State's other traditional industries. Further, the General Assembly finds that business and plant closings, the weakened State economy, and lengthening periods of unemployment have taken a toll on communities across the State. It is prudent to address the loss of jobs by establishing a statewide initiative to create more jobs for our citizens.

(b) It is the policy of this State to stimulate job growth and hiring by investing in the effective retraining of trade-affected displaced workers while partnering with private business to help those citizens learn new skills for new jobs through on-the-job training and educational assistance.

(c) The purpose of this Part is to establish the Trade Jobs for Success initiative to stimulate job growth and hiring in the State and to assist displaced workers affected by trade-impact business closings. The aim of the Trade Jobs for Success initiative shall be to partner with private business to

move displaced workers into new jobs while allowing for a dignified transition from unemployment back to employment. (2004-124, s. 13.7A(d).)

Editor's Note. — Session Laws 2004-124, s. 13.7A(a) through (c), provides: "The Employment Security Commission shall take all actions practicable to obtain from the U.S. Department of Labor as quickly as possible a waiver under the Trade Adjustment Act to allow the Trade Jobs for Success initiative to (i) serve persons regardless of their age, (ii) use unemployment funds to provide direct monetary incentives to participating employers and direct income to eligible workers in the retraining program, and (iii) use funds for in-State relocation assistance. Waivers shall be sought for other program components, as appropriate.

"(b) The Department of Commerce, in cooperation with the Employment Security Commission and the North Carolina Community College System shall begin implementation of the Trade Jobs for Success initiative in the counties hardest hit by trade impacted job losses and the resulting decline of traditional North Carolina industries including the textile, clothing, and furniture industries and other manufacturing operations. Counties having an unemployment rate of eight percent (8%) or more shall receive priority consideration.

"(c) The Department of Commerce shall seek, and may receive, private grants and federal funds for the Trade Jobs for Success initiative."

Session Laws 2004-124, s. 33.6, made this Part effective July 1, 2004.

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 143B-438.16. Trade Jobs for Success initiative established; funds; program components and guidelines.

(a) There is established within the Department of Commerce the Trade Jobs for Success (TJS) initiative. The Department of Commerce shall lead the TJS initiative in cooperation with the Employment Security Commission and the Community Colleges System Office.

(b) There is created in the Department of Commerce a special, nonreverting fund called the Trade Jobs for Success Fund (Fund). The Fund shall be used to implement the TJS initiative. The Department of Commerce shall develop guidelines for administration of the TJS initiative and the Fund. An advisory council shall assist the Secretary of Commerce in the administration of the Fund. The members of the advisory council shall include:

(1) The Chairman of the Employment Security Commission or that officer's designee.

(2) The President of the Community Colleges System or that officer's designee.

(3) The State Auditor or that officer's designee.

(4) A representative of a statewide association to further the interests of business and industry in North Carolina designated by the Secretary of Commerce.

(c) At a minimum, the Trade Jobs for Success initiative shall include the following programmatic components:

(1) Displaced workers participating in the TJS initiative shall receive (i) on-the-job training to learn new job skills and (ii) educational assistance or remedial education specifically designed to help displaced workers qualify for new jobs.

(2) Displaced workers participating in the TJS initiative shall not lose their eligibility for unemployment insurance benefits while they are in the program and may receive wage supplements, as appropriate.

(3) In-State relocation assistance, in appropriate instances, where participating individuals must relocate to work for participating employers.

(4) Mentoring, both on and off the job, shall be provided to participants in a dignified manner through telephone assistance and other appropriate means.

(5) Financial assistance and other incentives may be provided to participating employers who provide jobs to participating displaced workers to help defray the costs of providing the on-the-job training opportunities.

(6) Work provided by participating employers as part of the TJS initiative must be full-time employment. Wages paid shall not be less than the hourly entry-level wage normally paid by the employer.

(7) Staff of the Employment Security Commission, in conjunction with staff of the Department of Commerce, shall match participating displaced workers to the most suitable employer.

(8) Local Employment Security Commission offices and community colleges shall enter into partnership agreements with local chambers of commerce, and other appropriate organizations, that would encourage employer participation in the TJS initiative.

(9) Tracking of participating individuals and businesses by the Department of Commerce and the Employment Security Commission to assure program integrity and effectiveness and the compilation of data to generate the reports necessary to evaluate the success of the TJS initiative.

(10) Coordination and integration of existing programs in the Department of Commerce, the Employment Security Commission, and the North Carolina Community College System in a manner that maximizes the flexibility of these agencies to effectively assist participating individuals and businesses. (2004-124, s. 13.7A(d).)

§ 143B-438.17. Reporting.

The Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a quarterly report on the Trade Jobs for Success initiative. The report shall provide information on the commitment, disbursement, and use of funds and the status of any grant proposals or waivers requested on behalf of the Trade Jobs for Success initiative. The report shall also include legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the report shall be provided to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly. (2004-124, s. 13.7A(d).)

Article 12.

Department of Juvenile Justice and Delinquency Prevention.

Part 2. General Provisions.

§ 143B-515. Definitions.

Youth Development Center Staffing. — Session Laws 2004-124, s. 16.4.(a) to (c) provide: "With the approval of the Office of State Personnel and the Office of State Budget and Management, the Department of Juvenile Justice and Delinquency Prevention may:

"(1) Reclassify existing departmental vacant positions to establish up to 18 new positions in new job classes listed in this subsection. The Department may use departmental salary reserves and salaries from vacant positions to establish these positions. These newly established positions shall be assigned

to Stonewall Jackson and Samarkand Youth Development Centers. The positions shall be reclassified as 14 youth development center youth counselors, two youth counselor supervisors, and two licensed mental health clinicians.

"(2) Use up to one hundred eighty-three thousand nine hundred ninety-two dollars ($183,992) of salary reserves to reclassify up to 68 existing positions to 58 youth counselors and 10 youth counselor supervisors.

"These new positions will provide the starting point for the potential implementation of a statewide therapeutic staffing model.

"(b) Prior to establishing new positions or reclassifying positions listed in subsection (a) of this section, the Department of Juvenile Justice and Delinquency Prevention shall prepare a long-range plan for establishing a therapeutic staffing model to be used in all youth development centers. The plan shall include:

"(1) A report on the proposed implementation of 18 new positions and reclassifications identified in subsection (a) of this section. The report shall provide information on (i) the vacant positions to be reallocated to establish new positions, (ii) the amount and source of funds used for these positions and reclassifications, (iii) how the 18 positions will be allocated between Stonewall Jackson and Samarkand and their specific duties, and (iv) how the 68 reclassified positions will be allocated among the existing youth development centers.

"(2) An outline of the cost and benefits of the proposed model for juveniles in the custody of the Department and a summary of available research regarding the use of therapeutic staffing models in juvenile facilities.

"(3) An action plan and time line for reclassifying current counselor technicians, behavioral specialists, cottage parents, or other current positions to youth counselor or youth counselor supervisor positions or to other job classes that are progressive steps towards youth counselor positions. The Department shall also estimate the number of current statewide positions likely to be reclassified to youth counselor positions, youth counselor supervisors, or other job classes based on the qualifications of the current staff.

"(4) Job specifications, salary grades, and operating costs for each new job class.

"(5) The recommended staffing for and qualifications of teachers and teacher assistants and the standards for evaluating teacher quality in youth development centers.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report by December 1, 2004, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the long-range plan required by this section and the budgetary costs for statewide implementation of the therapeutic staffing model."

Part 3. Juvenile Facilities.

§ 143B-525. Juvenile facilities.

Youth Development Center Staffing. — Session Laws 2004-124, s. 16.4.(a) to (c) provide: "With the approval of the Office of State Personnel and the Office of State Budget and Management, the Department of Juvenile Justice and Delinquency Prevention may:

"(1) Reclassify existing departmental vacant positions to establish up to 18 new positions in new job classes listed in this subsection. The Department may use departmental salary reserves and salaries from vacant positions to establish these positions. These newly established positions shall be assigned to Stonewall Jackson and Samarkand Youth Development Centers. The positions shall be reclassified as 14 youth development center youth counselors, two youth counselor supervisors, and two licensed mental health clinicians.

"(2) Use up to one hundred eighty-three thousand nine hundred ninety-two dollars ($183,992) of salary reserves to reclassify up to 68 existing positions to 58 youth counselors and 10 youth counselor supervisors.

"These new positions will provide the starting point for the potential implementation of a statewide therapeutic staffing model.

"(b) Prior to establishing new positions or reclassifying positions listed in subsection (a) of this section, the Department of Juvenile Justice and Delinquency Prevention shall prepare a long-range plan for establishing a therapeutic staffing model to be used in all youth development centers. The plan shall include:

"(1) A report on the proposed implementation of 18 new positions and reclassifications identified in subsection (a) of this section. The report shall provide information on (i) the vacant positions to be reallocated to establish new positions, (ii) the amount and source of funds used for these positions and reclassifications, (iii) how the 18 positions will be allocated between Stonewall Jackson and Samarkand and their specific duties, and (iv) how the 68 reclassified positions will be allocated among the existing youth development centers.

"(2) An outline of the cost and benefits of the proposed model for juveniles in the custody of the Department and a summary of available research regarding the use of therapeutic staffing models in juvenile facilities.

"(3) An action plan and time line for reclassifying current counselor technicians, behavioral specialists, cottage parents, or other current positions to youth counselor or youth counselor supervisor positions or to other job classes that are progressive steps towards youth counselor positions. The Department shall also estimate the number of current statewide positions likely to be reclassified to youth counselor positions, youth counselor supervisors, or other job classes based on the qualifications of the current staff.

"(4) Job specifications, salary grades, and operating costs for each new job class.

"(5) The recommended staffing for and qualifications of teachers and teacher assistants and the standards for evaluating teacher quality in youth development centers.

"(c) The Department of Juvenile Justice and Delinquency Prevention shall report by December 1, 2004, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the long-range plan required by this section and the budgetary costs for statewide implementation of the therapeutic staffing model."

Chapter 146.

State Lands.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

Sec.
146-22.3. Acquisition of land to be used to restore, enhance, preserve, or create wetlands.
146-22.4. Acquisition of wetlands from private mitigation banking companies.
146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

CASE NOTES

Illustrative Cases. — Where the town entered into a project to preserve ocean turtle habitat, and built a fence to protect the restored sand dune area, the oceanfront property owners' contention that the town could not, without compensation, in any way limit their direct access to the ocean was inconsistent with the qualified nature of that right pursuant to the State Lands Act, codified at G.S. 146-1 et seq.; further, the property owners did not have a vested appurtenant littoral right of direct access to the ocean, and summary judgment in favor of the town was proper. Slavin v. Town of Oak Island, 160 N.C. App. 57, 584 S.E.2d 100, 2003 N.C. App. LEXIS 1670 (2003).

ARTICLE 2.

Dispositions.

§ 146-6. Title to land raised from navigable water.

CASE NOTES

Extension of Property Lines Under Subsection (e). —

Because the renourishment projects undertaken by the town to restore ocean turtle habitat were publicly financed sand placement projects, title to the newly-created beach was vested in the State, and despite the protests of ocean front property owners, nothing in the State Lands Act, codified at G.S. 146-1 et seq., which limited the authority of a town or city to enact regulations in order to protect a public beach located within its municipal limits. Slavin v. Town of Oak Island, 160 N.C. App. 57, 584 S.E.2d 100, 2003 N.C. App. LEXIS 1670 (2003).

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration.

State-owned surplus real property system. — Session Laws 2003-284, ss. 6.8(a) through (g), as amended by Session Laws 2004-124, ss. 6.4(c) and (d), provides: "(a) Definition. — For purposes of this section, the term 'State-owned surplus real property' means State-owned land and buildings that are unused or underused.

"(b) Establish State-Owned Surplus Real Property Disposal System; Purpose; Use of Proceeds. — The Department of Administration, in consultation with the Office of State Budget and Management, the Department of Transportation, The University of North Carolina, and all other affected State departments, agencies, and institutions, shall develop and implement a State-owned surplus real property disposal system. The purpose of the system is to establish a uniform real property disposal system that will continuously identify State-owned surplus real property, evaluate that property, and dispose of that property as appropriate. Unless otherwise provided by law, the clear proceeds of the sale of State-owned surplus real property shall be credited to the General Fund.

"(c) Duties; Criteria. — In compliance with this section, the Department of Administration, in consultation with all other affected State departments, agencies, and institutions, shall do all of the following:

"(1) Review the current inventory of State-owned land and buildings for accuracy and completeness.

"(2) Determine how and when State-owned land and buildings should be declared surplus.

"(3) Develop criteria to be considered prior to the disposal of any property under the system. The criteria shall include all of the following factors:

"a. The condition of the property;

"b. The extent to which it meets the purpose for which it was intended;

"c. The future needs of the Agency to perform the service intended at the location;

"d. The best and most cost-effective manner in which these future needs can be serviced;

"e. The practicability of moving the function of the services performed at a location to another area that might reduce acquisition, construction, and labor cost without diminishing the quality of service;

"f. A recommendation as to whether a respective property should be (i) sold or retained, (ii) renovated, (iii) expanded for future use, or (iv) sold with a leaseback for a period of not more than 10 years in order to allow transition; and

"g. Other recommendations regarding use of the property.

"(3) Determine whether the highest and best use is being made of the State-owned property.

"(4) Determine whether State agencies have the authority to retain funds from the disposal of State-owned surplus real property and whether this is consistent among agencies and conducive to the disposal of unneeded property.

"(5) Consider the use of private real estate brokers, auction, and any other method determined to be suitable in order to efficiently and effectively dispose of State-owned surplus real property.

"(6) Review the real property held by a selected number of State agencies to determine whether the agency has any property that meets the criteria as set forth in this section.

"(7) Assess the need for additional staff to effectively administer the system.

"(8) Examine current State law to assess the need for changes in order to support a uniform system to identify, evaluate, and dispose of all unused or underused State-owned land and buildings."

"(d) Repealed by Session Laws 2004-124, s. 6.4(d), effective July 1, 2004.

"(e) Consultants May Be Retained. — The Department may retain consultants to assist the accomplishment of the objectives set forth in subsection (a) of this section.

"(f) Study Sale and Lease-Back Potential of State-Owned Property. — As part of developing the State-owned surplus real property disposal system mandated by this section, the Department of Administration shall also review the highest and best use of state-owned property and determine if less expensive alternative sites should be acquired for State use and the former sites sold or marketed by sale and lease back until the alternative site is ready for use. The Department shall include its findings and recommendations in the reports to the Joint Legislative Commission on Governmental Operations required by this section.

"(g) Reporting Requirement. — The Department of Administration shall make an interim report to the Joint Legislative Commission on Governmental Operations no later than December 1, 2003, regarding the extraordinary measures being taken to comply with this section and shall make a final report no later than March 1, 2004, regarding its findings and recommendations and the progress in implementing this section."

§ 146-22.3. Acquisition of land to be used to restore, enhance, preserve, or create wetlands.

(a) Payment. — A State agency that acquires land by purchase for the purpose of restoring, enhancing, preserving, or creating wetlands as required by a permit or an authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 must pay to the county in which the land is located, as reimbursement, a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the State agency.

(b) Exception. — This section does not apply when the land purchased by the State agency and the wetlands permitted to be lost are located in the same county. In other circumstances, the governing body of the county and the State agency may enter into a written agreement to waive payment.

(c) Amount. — The estimated amount of ad valorem taxes that would have accrued for the next 20 years is the total assessed value of the acquired land excluded from the county's tax base multiplied by the tax rate set by the county board of commissioners in its most recent budget ordinance adopted under Chapter 159 of the General Statutes, and then multiplied by 20.

(d) Application. — This section applies only to land acquired in counties designated as an enterprise tier one or enterprise tier two area under G.S. 105-129.3. (2004-188, s. 4.)

Editor's Note. — Session Laws 2004-188, s. 7, made this section effective August 17, 2004, and applicable to transfers made on or after that date.

§ 146-22.4. Acquisition of wetlands from private mitigation banking companies.

(a) Payment for Taxes. — A State agency that acquires wetlands from a private mitigation banking company must pay a sum in lieu of ad valorem taxes to the county where the wetlands are located. The sum is equal to the estimated amount of ad valorem taxes that would have accrued for the next 20 years as computed in G.S. 146-22.3(c).

(b) Requirement for Acquisition. — A State agency may require, as a condition of accepting a donation of wetlands by a private mitigation banking company, that the company make adequate provisions for the long-term maintenance and management of the wetlands. These provisions may include reimbursement to the agency for payment of a sum in lieu of ad valorem taxes.

(c) Application. — This section applies only to land acquired in counties designated as an enterprise tier one or enterprise tier two area under G.S. 105-129.3. (2004-188, s. 5.)

Editor's Note. — Session Laws 2004-188, s. 7, made this section effective August 17, 2004, and applicable to transfers made on or after that date.

§ 146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.

(a) If a State agency acquires land under G.S. 146-22.3 or G.S. 146-22.4 and later uses this land to mitigate wetlands permitted to be lost in the same county, then the county shall reimburse the State agency for a percentage of the estimated amount of ad valorem taxes paid for the land in accordance with G.S. 146-22.3 minus ten percent (10%) of this amount times the number of years the State agency held the land before the wetlands were lost.

(b) Application. — This section applies only to land acquired in counties designated as an enterprise tier one or enterprise tier two area under G.S. 105-129.3. (2004-188, s. 6.)

Editor's Note. — Session Laws 2004-188, s. 7, made this section effective August 17, 2004, and applicable to transfers made on or after that date.

ARTICLE 7.

Dispositions.

§ 146-30. Application of net proceeds.

Transfer of Funds to Commission on State Property. — Session Laws 2004-124, s. 6.4.(b) provides: "Of the funds appropriated to the Department of Administration for the 2004-2005 fiscal year, the Director of the Budget shall transfer two hundred thousand dollars ($200,000) to the Commission on State Property established in subsection (a) of this section. Notwithstanding the provisions of G.S. 146-30, the first two hundred thousand dollars ($200,000) of the net proceeds of dispositions of property that would otherwise be deposited with the State Treasurer and credited to the General Fund shall be used to offset the transfer of funds from the Department of Administration to the Commission on State Property."

Chapter 147.

State Officers.

Article 3.

The Governor.

Sec.
147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.
147-16.2. Duration of boards and councils created by executive officials; extensions.

Part 1. State Information Technology Management.

147-33.72A. Purpose.
147-33.72B. Planning and financing State information technology resources.
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Part 1A. Organization of Office of Information Technology Services.

147-33.75. Office located in the Office of the Governor.
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Article 3D.

State Information Technology Services.

147-33.78, 147-33.79. [Repealed].

Part 2. General Powers and Duties.

147-33.82. Functions of the Office of Information Technology Services.
147-33.83. Information resources centers and services.
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147-33.87. Financial reporting and accountability for information technology investments and expenditures.
147-33.88. Information technology reports.
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Part 3. Telecommunications Services.

Sec.
147-33.91. Telecommunications services; duties of State Chief Information Officer with respect to State agencies.
147-33.92. Telecommunications services for local governmental entities and other entities.

Part 4. Procurement of Information Technology.

147-33.95. Procurement of information technology.
147-33.101. Board of Awards review.
147-33.103. Attorney General contract assistance; rule-making authority.

Part 5. Security for Information Technology Services.

147-33.110. Statewide security standards.
147-33.111. State CIO approval of security standards and security assessments.
147-33.112. Assessment of agency compliance with security standards.
147-33.113. State agency cooperation.

Article 4B.

Business License Information Office [Repealed.]

147-54.11 through 147-54.19. [Repealed.]

Article 5A.

Auditor.

147-64.6. Duties and responsibilities.

Article 6.

Treasurer.

147-68. To receive and disburse moneys; to make reports.
147-69. Deposits of State funds in banks and savings and loan associations regulated.
147-69.2. Investments authorized for special funds held by State Treasurer.

Article 6C.

Health and Wellness Trust Fund.

147-86.30. Health and Wellness Trust Fund established.

Sec.
147-86.35. Health and Wellness Trust Fund; reporting requirements.

Article 3.

The Governor.

§ 147-10. Governor to reside in Raleigh; mansion and accessories.

Editor's Note. — Session Laws 2003-404, ss. 1-4, as amended by Session Laws 2004-124, s. 19.9, provide: "SECTION 1.(a) Modification of the Capital Area Master Plan to provide for the sale of certain properties. — Prior to May 1, 2004, the Department of Administration and the Capital Planning Commission shall modify the Capital Area Master Plan for State Government to provide for the sale to private or public entities of State-owned properties within and adjacent to the Blount Street Historic District, an area bordered by North Person Street, Jones Street, North Wilmington Street, and Peace Street, except for the Governor's Mansion, the Archives and History Building, the State Records Center, the Bath Building, and the Leonidas Lafayette Polk House, which shall be excluded from the sales provisions hereof. The Department of Administration is authorized to sell any such property pursuant to Chapter 146 of the General Statutes, and such sale shall take place at the time the Department determines that a property is no longer needed for State purposes and that it is in the best interest of the State to sell that property.

"(b) Preservation or conservation agreements required on all sales. — The sale of property in this area shall be subject to preservation or conservation agreements as defined in G.S. 121-35 that ensure that the use of the property is consistent with the historic and architectural character of the district.

"(c) Procedures for the sale of properties. — Due to (i) the significant architectural, archaeological, artistic, cultural, or historical associations of these properties, (ii) the properties' relationship to other property that is significant for architectural, archaeological, artistic, cultural, or historical associations, and (iii) the requirement that a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the State, these properties shall be sold by private negotiation and sale, and all such sales shall be approved by the State Property Office.

"Property sold pursuant to this act shall be sold in accordance with the procedures set forth in G.S. 146-27 through G.S. 146-29.

"(d) Funds to implement the sales process. — Of the funds available to the Department of Administration, the Department may use up to five hundred thousand dollars ($500,000) to implement the provisions of this act."

"SECTION 2. Use of the net proceeds of sales. — The net proceeds of any sale made in accordance with this act shall be handled in the following priority order:

"(1) In accordance with the provisions of any trust or other instrument of title under which title to the real property was acquired by the State. The term "net proceeds" means the gross amount received from the sale of any such property less any expenses incurred incident to that sale, subject to regulations adopted by the Governor and approved by the Council of State.

"(2) To reimburse the Department of Administration for any funds expended pursuant to Section 1(d) of this act.

"(3) The next five million dollars ($5,000,000) of the funds shall be placed in a special trust fund in the Department of State Treasurer, hereinafter to be held in trust and used solely for the upkeep, repair, and maintenance of the Executive Mansion. The State Treasurer, as custodian of the special trust fund, shall authorize the use of interest earned by the special trust fund only for such purposes as approved by the Executive Mansion Fine Arts Committee. The duties of the Committee under this section are in addition to those provided by G.S. 143B-79. The Executive Mansion Fine Arts Committee shall report to the Joint Legislative Commission on Governmental Operations any expenditures within 30 days of approving them. The principal may not be used for any purpose.

"(4) The remainder not needed under subdivisions (1) through (3) of this section shall be placed in the General Fund.

"SECTION 3.(a) Establishment of the Blount Street Historic District Oversight Committee. — The Blount Street Historic District Oversight Committee is established in the Office of the Governor.

"(b) Membership of the Committee. — The Committee shall consist of eight members appointed as follows:

"(1) The State Historic Preservation Officer, or a person designated by that officer, ex officio.

"(2) Two members appointed by the Governor, one of whom shall be a person with experience in urban planning.

"(3) Two members appointed by the President Pro Tempore of the Senate, one of whom shall be a person with experience in historic preservation.

"(4) Two members appointed by the Speaker of the House of Representatives, one of whom shall be a resident of Historic Oakwood in Raleigh.

"(5) One member, appointed by the Mayor of the City of Raleigh.

"In making initial appointments to the Committee, the appointing officers shall designate one appointee to serve for a term of four years ending July 1, 2007, and one appointee to serve a term of six years ending July 1, 2009. Subsequent terms shall be for four years. A member shall continue to serve until the member's successor is appointed. A vacancy resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

"In making all appointments, the appointing officer shall consider the unique historic and architectural nature of the area and shall appoint people who are dedicated to preserving it.

"The Governor may remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16.

"A majority of the Committee shall constitute a quorum for the transaction of business. The Governor shall appoint the chair and vice-chair from among the Committee's membership. The State Historic Preservation Officer shall serve as secretary of the Committee. The members of the Committee shall serve without pay and without expense allowance.

"(c) Purpose of the Committee. — The purpose of the Committee shall be to monitor the implementation of this act.

"SECTION 4. Implementation plan for this act. — Prior to September 1, 2004, the Department of Administration shall submit to the Blount Street Historic District Oversight Committee a plan for the implementation of this act and a schedule for implementation of the plan. The plan may provide for the sale of property in separate parcels or in its entirety."

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be one hundred twenty-one thousand three hundred ninety-one dollars ($121,391) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1; 1995, c. 507, s. 7.1(a); 1996, 2nd Ex. Sess., c. 18, s. 28(a); 1997-443, s. 33(a); 1998-153, s. 3(a); 1999-237, s. 28(a); 2000-67, s. 26(a); 2004-124, s. 31.1(b).)

Editor's Note. —

Session Laws 2003-284, s. 30.1(a), as amended by Session Laws 2004-124, s. 31.1(a), provides: "For the 2003-2004 fiscal year, the salary of the Governor shall remain the amount set by G.S. 147-11(a)."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.5 is a severability clause.

Effect of Amendments. — Session Laws 2004-124, s. 31.1(b), effective July 1, 2004, substituted "one hundred twenty-one thousand three hundred ninety-one dollars ($121,391)" for "one hundred eighteen thousand four hundred thirty dollars ($118,430)" in subsection (a).

§ 147-16.2. Duration of boards and councils created by executive officials; extensions.

(a) Any executive order of the Governor that creates a board, committee, council, or commission expires two years after the effective date of the executive order, unless the Governor specifies an expiration date in the order; provided, however, that any such executive order that was in effect on July 1, 1983, expires on June 30, 1985, unless the Governor specified a different expiration date in any such order. The Governor may extend any such executive order before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the Governor with the Secretary of State and the Legislative Library.

(b) Any other State board, committee, council, or commission created by the Governor or by any other State elective officer specified in Article III of the North Carolina Constitution expires two years after it was created; provided, however, that any such board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The elective officer creating any such board, committee, council, or commission may extend the board, committee, council, or commission before it expires for additional periods of up to two years by doing so in writing; copies of the writing shall be filed by the elective officer with the Secretary of State and the Legislative Library.

(c) Any State board, committee, council, or commission created by any official in the executive branch of State government, other than by those officials specified in subsections (a) and (b) of this section, expires two years after it was created; provided, however, that any board, committee, council, or commission existing as of July 1, 1984, expires on June 30, 1985, unless it was due to expire on an earlier date. The Governor may extend any such board, committee, council, or commission before it expires for additional periods of up to two years by executive order; copies of the executive order shall be filed by the Governor with the Secretary of State and the Legislative Library.

The words, "official in the executive branch of State government," as used in this section, do not include officials of counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivision, or local boards of education, other local public districts, units or bodies of any kind, or community colleges as defined in G.S. 115D-2(2), or private corporations created by act of the General Assembly.

(d) Any elective officer specified in subsection (b) of this section and any other official in the executive branch of State government who creates a board, committee, council, or commission shall do so in writing and shall file copies of the writing with the Secretary of State and the Legislative Library. (1983, c. 733, s. 1; 1983 (Reg. Sess., 1984), c. 1053; 2004-203, s. 50(b).)

Effect of Amendments. — Session Laws 2004-203, s. 50.(b), effective August 17, 2004, deleted "State" preceding "Legislative Library" in subsections (a), (b), (c), and (d), and inserted "of this section" following "(b)" in subsections (c) and (d).

Part 1. State Information Technology Management.

§ 147-33.72A. Purpose.

The purposes of this Article are to:

(1) Establish a systematic process for planning and financing the State's information technology resources.

(2) Develop standards and accountability measures for information technology projects, including criteria for adequate project management.

(3) Implement procurement procedures that will result in cost savings on information technology purchases.

(4) Create an Information Technology Advisory Board.

(5) Create the Information Technology Fund for statewide information technology efforts. (2004-129, s. 2.)

Editor's Note. — Session Laws 2004-129, s. 2, effective July 1, 2004, substituted "State Information Technology Services" for "Office of Information Technology Services" as the heading for Article 3D.

Session Laws 2004-129, s. 1, redesignated G.S. 147-33.75 through 147-33.79 as Part 1A of Article 3D of Chapter 147.

Session Laws 2004-129, s. 49, made this part effective July 1, 2004.

Session Laws 2004-129, s. 48, provides: "Nothing in this act shall be construed to require a State agency that has issued a request for proposals for an information technology project approved by the Information Resources Management Commission to seek approval of the information technology project by the State Chief Information Officer under G.S. 147-33.72C or otherwise revise the request for proposals."

§ 147-33.72B. Planning and financing State information technology resources.

(a) In order to provide a systematic process for meeting the State's technology needs, the State Chief Information Officer shall develop a biennial State Information Technology Plan (Plan). The Plan shall be transmitted to the General Assembly by February 1 of each regular session.

(b) The Plan shall include the following elements:

(1) An inventory of current information technology assets and major projects currently in progress. As used in this subdivision, the term "major project" includes projects subject to review and approval under G.S. 147-33.72C, or that cost more than five hundred thousand dollars ($500,000) to implement.

(2) An evaluation and estimation of the significant unmet needs for information technology resources over a five-year time period. The Plan shall rank the unmet needs in priority order according to their urgency.

(3) A statement of the financial requirements posed by the significant unmet needs, together with a recommended funding schedule for each major project currently in progress or recommended for initiation during the upcoming fiscal biennium.

(4) An analysis of opportunities for statewide initiatives that would yield significant efficiencies or improve effectiveness in State programs.

(c) Each executive agency shall biennially develop an agency information technology plan that includes the information required under subsection (b) of this section. The Office of Information Technology Services shall consult with and assist agencies in the preparation of these plans. Each agency shall submit its plan to the State Chief Information Officer by October 1 of each even-numbered year. (2004-129, s. 2.)

§ 147-33.72C. Project approval standards.

(a) Project Review and Approval. — The State Chief Information Officer shall:

(1) Review all State agency information technology projects that cost or are expected to cost more than five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components. If the State Chief Information Officer determines a project meets the quality assurance requirements established under this Article, the State Chief Information Officer shall approve the project.

(2) Establish thresholds for determining which information technology projects costing or expected to cost five hundred thousand dollars ($500,000) or less shall be subject to review and approval under subdivision (a)(1) of this section. When establishing the thresholds, the State Chief Information Officer shall consider factors such as project cost, potential project risk, agency size, and projected budget.

(b) Project Implementation. — No State agency shall proceed with an information technology project that is subject to review and approval under subsection (a) of this section until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency within five business days of the denial.

(c) Suspension of Approval. — The State Chief Information Officer may suspend the approval of any information technology project that does not continue to meet the applicable quality assurance standards. This authority extends to any information technology project that costs more than five hundred thousand dollars ($500,000) to implement regardless of whether the project was originally subject to review and approval under subsection (a) of this section. If the State CIO suspends approval of a project, the State CIO shall specify in writing to the agency the grounds for suspending the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Office of Information Technology Services shall report any suspension immediately to the Office of the State Controller and the Office of State Budget and Management. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State Chief Information Officer.

(d) General Quality Assurance. — Information technology projects that are not subject to review and approval under subsection (a) of this section shall meet all other standards established under this Article.

(e) Performance Contracting. — All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions include monetary penalties for projects that are not completed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may require contract provisions requiring a vendor to provide a performance bond. (2004-129, s. 2.)

Editor's Note. — Session Laws 2004-129, s. 48, provides: "Nothing in this act shall be construed to require a State agency that has issued a request for proposals for an information technology project approved by the Information Resources Management Commission to seek approval of the information technology project by the State Chief Information Officer under G.S. 147-33.72C or otherwise revise the request for proposals."

§ 147-33.72D. Agency/State CIO Dispute Resolution.

(a) Agency Request for Review. — In any instance where the State CIO has denied or suspended the approval of an information technology project, or has denied an agency's request for deviation pursuant to G.S. 147-33.84, the agency may request a committee review of the State CIO's decision. The agency shall submit a written request for review to the State Controller within 10 working days following the agency's receipt of the State CIO's written grounds for denial or suspension. The agency's request for review shall specify the grounds for its disagreement with the State CIO's determination. The agency shall include with its request for review a copy of the State CIO's written grounds for denial or suspension.

(b) Review Process. — The review committee shall consist of the State Controller, the State Budget Officer, and the Secretary of Administration. The State Controller shall serve as the chair of the review committee. If the chair or one of the members of the review committee is an official of the agency that has requested the review, that person is deemed to have a conflict of interest and is ineligible to participate in the consideration of the matter, and the two remaining members of the review committee shall select an alternate official to serve as a member of the review committee for that specific matter. Within 10 business days following receipt of an agency's request for review, the committee shall meet to consider the matter. The committee shall review the information provided, and may request additional information from either the agency or the State CIO. The committee may affirm, reverse, or modify the decision of the State CIO, or may remand the matter back to the State CIO for additional findings. Within 30 days after initial receipt of the agency's request for review, the committee shall notify the agency and the State CIO of its decision in the matter. The notification shall be in writing, and shall specify the grounds for the committee's decision. The committee may reverse or modify a decision of the State CIO when the committee finds at least one of the following:

(1) The decision of the State CIO is unsupported by substantial evidence that the agency project fails to meet one or more standards of efficiency and quality of State government information technology as required under this Article.

(2) The State CIO did not have the requisite statutory authority or jurisdiction to render the decision.

(3) The decision of the State CIO was rendered in a manner that was arbitrary, capricious, or indicative of an abuse of discretion. (2004-129, s. 2.)

§ 147-33.72E. Project management standards.

(a) Agency Responsibilities. — Each agency shall provide for a project manager who meets the applicable quality assurance standards for each information technology project that is subject to approval under G.S. 143-33.72C(a). The project manager shall be subject to the review and approval of the State Chief Information Officer.

The agency project manager shall provide periodic reports to the project management assistant assigned to the project by the State CIO under subsection (b) of this section. The reports shall include information regarding project costs, issues related to hardware, software, or training, projected and actual completion dates, and any other information related to the implementation of the information technology project.

(b) State Chief Information Officer Responsibilities. — The State Chief Information Officer shall designate a project management assistant from the

Office of Information Technology Services for projects that receive approval under G.S. 147-33.72C(a). The State Chief Information Officer may designate a project management assistant for any other information technology project.

The project management assistant shall advise the agency with the initial planning of a project, the content and design of any request for proposals, contract development, procurement, and architectural and other technical reviews. The project management assistant shall also monitor agency progress in the development and implementation of the project and shall provide status reports to the State Chief Information Officer, including recommendations regarding continued approval of the project. (2004-129, s. 2.)

§ 147-33.72F. Procurement procedures; cost savings.

Pursuant to Part 4 of this Article, the Office of State Technology Services shall establish procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use of formal bid procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The procedures may require agencies to submit information technology procurement requests to the Office of State Technology Services on October 1, January 1, and June 1 of each fiscal year in order to allow for bulk purchasing. (2004-129, s. 2.)

§ 147-33.72G. Information Technology Advisory Board.

(a) Creation; Membership. — The Information Technology Advisory Board is established and shall be located within the Office of Information Technology Services for organizational, budgetary, and administrative purposes. The Board shall consist of 12 members, four appointed by the Governor, four appointed by the President Pro Tempore of the Senate, and four appointed by the Speaker of the House of Representatives. All appointments shall be from among persons knowledgeable in the subject area and having experience with State government or information technology deployment within large organizations. Each member shall serve at the pleasure of the officer who appointed the member. The Governor shall designate a chair from among the membership.

(b) Conflicts of Interest. — Members of the Advisory Board shall not serve on the board of directors or other governing body of, be employed by, or receive any remuneration of any kind from any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

No member of the Advisory Board shall vote on an action affecting solely that person's State agency.

(c) Powers and Duties. — The Board shall:

(1) Review and comment on the State Information Technology Plan developed by the State Chief Information Officer under G.S. 147-33.72B(b).

(2) Review and comment on the information technology plans of the executive agencies prepared under G.S. 147-33.72B(c).

(3) Review and comment on the statewide technology initiatives developed by the State Chief Information Officer.

(d) Meetings. — The Information Technology Advisory Board shall adopt bylaws containing rules governing its meeting procedures. The Board shall meet at least quarterly. The Office of Information Technology Services shall provide administrative staff and facilities for Advisory Board meetings. The expenses of the Board shall be paid from receipts available to the Office of Information Technology Services as requested by the Board. Advisory Board members shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and
(2) All other commission members, at the rate established in G.S. 138-5. (2004-129, s. 2.)

§ 147-33.72H. Information Technology Fund.

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money may be appropriated from the Information Technology Fund to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of systemwide procurement procedures. Expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund shall be made by the State CIO in consultation with the Information Technology Advisory Board. By October 1 of each year, the State CIO shall submit to the Joint Legislative Oversight Committee on Information Technology a report on all expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund for the preceding fiscal year. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund. (2004-129, s. 2.)

Editor's Note. — Session Laws 2004-129, ss. 7(a) and (b), provide: "(a) On June 30, 2004, the State Controller shall transfer the sum of seven million five hundred thousand dollars ($7,500,000) from the Information Technology Services Internal Service Fund to the Information Technology Fund.

"(b) For the fiscal year 2004-2005 appropriations are made from the Information Technology Fund as follows:

"(1) The sum of two million seven hundred thousand dollars ($2,700,000) to the Office of State Controller to implement the recommendations of the statewide Business Infrastructure Study; and

"(2) The sum of four million eight hundred thousand dollars ($4,800,000) to the Office of Information Technology Services for the following purposes:

Security Assessment and Remediation	$ 3,000,000
Project Management Office Expansion	$ 600,000
Legacy Systems Study	$ 1,000,000
Legal Services	$ 100,000
ITS Management Staff	$ 100,000"

Part 1A. Organization of Office of Information Technology Services.

§ 147-33.75. Office located in the Office of the Governor.

(a) The Office of Information Technology Services ("Office") shall be housed in the Office of the Governor.

(b) The Governor has the authority, powers, and duties over the Office that are assigned to the Governor and the head of department pursuant to Article 1 of Chapter 143B of the General Statutes, G.S. 143A-6(b), and the Constitution and other laws of this State. (1999-434, s. 9; 2000-174, s. 2; 2004-129, ss. 1, 9.)

Editor's Note. —

Session Laws 2004-129, s. 1, effective July 1, 2004, provides that Part 1 of Article 3D of Chapter 147 of the General Statutes is redesignated as Part 1A.

Session Laws 2004-129, s. 6, provides: "All (i) records, (ii) personnel positions and salaries, (iii) property, and (iv) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Information Resources Management Commission are transferred to and vested in the Office of Information Technology Services authorized by Article 3D of Chapter 147 of the General Statutes."

Session Laws 2004-129, s. 8, effective July 1, 2004, substituted "Organization of Office of Information Technology Services" for "Transfer and Organization of Office" as the heading for Part 1A of Article 3D of Chapter 147.

Effect of Amendments. — Session Laws 2004-129, s. 9, effective July 1, 2004, substituted "Office located in" for "Transfer to" in the section heading; and substituted "shall be housed" for "of the Department of Commerce and the Information Resource Management Commission are hereby transferred to" in subsection (a).

§ 147-33.76. Qualification, appointment, and duties of the State Chief Information Officer.

(a) The Office of Information Technology Services shall be managed and administered by the State Chief Information Officer ("State CIO"). The State Chief Information Officer shall be qualified by education and experience for the office and shall be appointed by and serve at the pleasure of the Governor.

(b) Repealed by Session Laws 2004-129, s. 3.

(b1) The State CIO shall be responsible for developing and administering a comprehensive long-range plan to ensure the proper management of the State's information technology resources. The State CIO shall set technical standards for information technology, review and approve major information technology projects, review and approve State agency information technology budget requests, establish information technology security standards, provide for the procurement of information technology resources, and develop a schedule for the replacement or modification of major systems. The State CIO is authorized to adopt rules to implement this Article.

(c) The salary of the State Chief Information Officer shall be set by the General Assembly in the Current Operations Appropriations Act. The State Chief Information Officer shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act. (1999-434, s. 10; 2000-174, s. 2; 2004-129, ss. 1, 3.)

Editor's Note. — Session Laws 2004-129, s. 1, effective July 1, 2004, redesignated G.S. 147-33.75 through 147-33.79 as Part 1A of Article 3D of Chapter 147.

Effect of Amendments. — Session Laws 2004-129, s. 3, effective July 1, 2004, in the section heading, deleted "Head of the Office of Information Technology Services," substituted "Qualification, appointment, and duties" for "qualification and appointment," and inserted "the" preceding 'State Chief Information Officer"; in subsection (a), added "('State CIO')" at the end of the first sentence, and substituted "and serve at the pleasure of the Governor" for "the Governor after consultation with the Senate Committee on Information Technology and the House Committee on Technology meeting jointly (or by similar committees designated by the rules of each house)" at the end of the last sentence; deleted subsection (b); and added subsection (b1).

§ 147-33.77. Office of Information Technology Services; organization and operation.

Editor's Note. — Session Laws 2004-129, s. 1, effective July 1, 2004, redesignated G.S. 147-33.75 through 147-33.79 as Part 1A of Article 3D of Chapter 147.

Article 3D.

State Information Technology Services.

§§ 147-33.78, 147-33.79: Repealed by Session Laws 2004-129, ss. 4, 5.

Part 2. General Powers and Duties.

§ 147-33.82. Functions of the Office of Information Technology Services.

(a) In addition to any other functions required by this Article, the Office of Information Technology Services shall:

(1) Procure all information technology for State agencies, as provided in Part 4 of this Article.

(2) Submit for approval of the Office of State Budget and Management all rates and fees for common, shared State government-wide technology services provided by the Office on a fee-for-service basis and not covered by another fund.

(3) Conduct an annual assessment of State agencies for compliance with statewide policies for information technology and submit for review of the Information Technology Advisory Board recommended statewide policies for information technology.

(4) Develop standards, procedures, and processes to implement policies approved by the State CIO.

(5) Review State agency management of State information technology resources for compliance with this Article.

(6) Review State agency implementation of statewide information technology management efforts of State government for compliance with this Article.

(7) Repealed by Session Laws 2004-129, s. 13, effective July 1, 2004.

(8) Develop a project management, quality assurance, and architectural review process for projects that require review and approval under G.S. 147-33.72C(a).

(9) Repealed by Session Laws 2004-129, s. 13, effective July 1, 2004.

(b) Notwithstanding any other provision of law, local governmental entities may use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office. For purposes of this subsection, "local governmental entities" includes local school administrative units, as defined in G.S. 115C-5, and community colleges. Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Office. Any other State entities may also use the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office.

(c) Recodified as G.S. 147-33.110 by Session Laws 2004-129, s. 12, effective July 1, 2004.

(d) Recodified as G.S. 147-33.111 by Session Laws 2004-129, s. 12, effective July 1, 2004.

(e) Repealed by Session Laws 2004-129, s. 11, effective July 1, 2004.

(e1) Recodified as G.S. 147-33.112 by Session Laws 2004-129, s. 12, effective July 1, 2004.

(f) Recodified as G.S. 147-33.113 by Session Laws 2004-129, s. 12, effective July 1, 2004. (1999-434, s. 10; 2000-174, s. 2; 2001-424, s. 15.2(b); 2002-126, s. 27.2(a); 2003-153, ss. 1(a), 1(b); 2004-129, ss. 10, 11, 12, 13.)

Effect of Amendments. — Session Laws 2004-129, ss. 10 to 12, effective July 1, 2004, rewrote subsection (a); recodified subsections (c), (d), (e1) and (f) as G.S. 147-33.110 to 147-33.113, respectively; and repealed subdivision (d)(2) and subsection (e).

§ 147-33.83. Information resources centers and services.

(a) With respect to all executive departments and agencies of State government, except the Department of Justice if they do not elect at their option to participate, the Office of Information Technology Services shall have all of the following powers and duties:

(1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the State CIO, after consultation with the Office of State Budget and Management, decides it is advisable from the standpoint of efficiency and economy to establish these centers and services.

(2) With the approval of the Office of State Budget and Management, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services.

(3) To require any department served to transfer to the Office ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services.

(4) To adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network.

(5) To adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this section to facilitate more efficient and economic use of information technology in these departments.

(6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.

(7) To provide cities, counties, and other local governmental units with access to the Office of Information Technology Services, information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this section until safeguards for the data's security satisfactory to the department head and the State Chief Information Officer have been designed and installed and are fully operational. Nothing in this section may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This section does not affect the provisions of G.S. 147-64.6, 147-64.7, or 147-33.91.

(c) Notwithstanding any other provision of law, the Office of Information Technology Services shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission. (1989, c. 239, s. 5; c. 770, s. 60; 1989 (Reg. Sess., 1990), c. 1024, s. 36; 1991 (Reg. Sess., 1992), c. 900, s. 14(g); c. 1030, s. 51.14; 1997-148, ss. 5, 6; 1999-347, s. 2; 1999-434, s. 27; 2000-174, s. 2; 2004-129, s. 15.)

Effect of Amendments. — Session Laws 2004-129, s. 15, effective July 1, 2004, substituted "State CIO, after consultation with the Office of State Budget and Management," for "Information Resources Management Commission" in subdivision (a)(1); substituted "Office of State Budget and Management" for "Information Resources Management Commission" in subdivision (a)(2); deleted "With the approval of the Information Resources Management Commission" at the beginning of subdivisons (a)(3), (a)(4), and (a)(5); and designated the last sentence in subsection (b) as subsection (c).

§ 147-33.84. Deviations authorized for Department of Revenue; agency requests for deviations.

(a) The Department of Revenue is authorized to deviate from any provision in G.S. 147-33.83(a) that requires departments or agencies to consolidate information processing functions on equipment owned, controlled, or under custody of the Office of Information Technology Services. All deviations by the Department of Revenue pursuant to this section shall be reported in writing within 15 days by the Department of Revenue to the State CIO and shall be consistent with available funding. Any State agency may apply in writing to the State CIO for authority to deviate. If granted, any deviation shall be consistent with available funding and shall be subject to such terms and conditions as may be specified by the State CIO. If the agency's request for deviation is denied by the State CIO, the agency may request a review of the decision pursuant to G.S. 147-33.72D.

(b) The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements, and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the Office of Information Technology Services, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the State CIO. The Department of Revenue and the Office of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

(c) The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, the Department of Revenue shall review and evaluate any deviations and shall, in consultation with the Office of Information Technology Services, adopt a plan to phase out any deviations that are not determined to be necessary in carrying out functions and responsibilities unique to the Department. The plan adopted by the Department shall include a strategy to coordinate its general information processing functions with the Office of Information Technology Services in the manner prescribed by G.S. 147-33.83(a) and provide for its compliance with policies, procedures, and guidelines adopted by the Office of Information Technology Services. The Department of Revenue shall submit its plan to the Office of State Budget and Management by January 15, 2005. (1989, c. 239, s. 5; c. 770, s. 60; 1989 (Reg. Sess., 1990), c. 1024, s. 36; 1991 (Reg.

Sess., 1992), c. 900, s. 14(g); c. 1030, s. 51.14; 1997-148, ss. 5, 6; 1999-347, s. 2; 1999-434, s. 27; 2000-174, s. 2; 2004-129, s. 16.)

Effect of Amendments. — Session Laws 2004-129, s. 16, effective July 1, 2004, added "; agency requests for deviations" in the section heading; in subsection (a), added "by the Department of Revenue" in the second sentence, substituted "State CIO" for "Information Resources Management Commission" in the second sentence, and added the third, fourth, and last sentences; in subsection (b), deleted "or the Information Resources Management Commission" after "Technology Services" in the second sentence, and substituted "State CIO" for "Information Resources Management Commission"; and added subsection (d).

§§ 147-33.85, 147-33.86: Repealed by Session Laws 2004-129, ss. 17, 18, effective July 1, 2004.

§ 147-33.87. Financial reporting and accountability for information technology investments and expenditures.

The Office of Information Technology Services, the Office of State Budget and Management, and the Office of the State Controller shall jointly develop a system for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets. The system shall include hardware, software, personnel, training, contractual services, and other items relevant to information technology, and the sources of funding for each. Annual reports regarding information technology shall be coordinated by the Office with the Office of State Budget and Management and the Office of the State Controller, and submitted to the Governor and the General Assembly on or before October 1 of each year. (1999-434, s. 10; 2000-140, s. 93.1(i); 2000-174, s. 2; 2001-424, s. 12.2(b); 2004-129, s. 19.)

Effect of Amendments. — Session Laws 2004-129, s. 19, effective July 1, 2004, deleted the former third sentence which read: "This system must integrate seamlessly with the enterprise portfolio management system."; in the last sentence, substituted "and the" for the comma following "Governor" and deleted "and the Information Resources Management Commission" after "General Assembly."

§ 147-33.88. Information technology reports.

(a) The Office shall develop an annual budget for review and approval by the Office of State Budget and Management prior to April 1 of each year.

(b) The Office shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the Office's Internal Service Fund on a quarterly basis, no later than the first day of the second month following the end of the quarter. The report shall include current cash balances, line-item detail on expenditures from the previous quarter, and anticipated expenditures and revenues. The Office shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on expenditures for the upcoming quarter, projected year-end balance, and the status report on personnel position changes including new positions created and existing positions eliminated. The Office spending reports shall comply with the State Accounting System object codes. (1999-434, s. 10; 2000-174, s. 2; 2004-129, s. 20.)

Editor's Note. — Session Laws 2004-129, ss. 47(a) and (b) provide: "(a) Each State agency, with the exception of The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly shall conduct a thorough,

agencywide examination and analysis of its Information Technology (IT) infrastructure, including IT expenditures and management functions. The purpose of the examination is to enable the General Assembly, the State CIO, the Office of State Budget and Management, and the State Controller to readily determine the amount of State funds being expended annually on each and all IT functions. As part of this examination, each agency shall review IT contracts with outside vendors, including the adequacy of contract management, and shall consider the implementation of performance measures in the development of future IT contracts. Each agency shall also identify IT functions that could be performed more economically through statewide approach across all agencies. Each agency shall report its plan in a format developed and approved by the State CIO and the Office of State Budget and Management. Reports shall be submitted to the Office of State Budget and Management and the State CIO on or before March 1, 2005."

"(b) The Office of State Budget and Management, in conjunction with the State CIO, the Information Technology Advisory Board, and the State Controller, shall develop a plan to consolidate information technology infrastructure, staffing, and expenditures where a statewide approach would be more economical. The plan shall not include The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly. The plan shall consider agency-specific program needs. The plan shall include specific recommendations to convert contractor FTE to State positions for recurring activities where the contractor positions have been filled for 12 months, beginning July 1, 2003. In developing the recommendations for converting contractor positions, the OSBM shall consider the nature of the work being performed by the contractors, the level of technical expertise required for the work, and whether the use of State positions would be more economical. The plan also shall identify agencies that lack the budgetary and technical resources to operate modern, secure information technology systems, and propose a method of consolidating those information technology systems under a centralized authority, with the approval of the agency. The OSBM shall use reports compiled by each State agency, as required by subsection (a) of this section, in the development of the plan. The office shall report the plan to the Joint Legislative Commission on Governmental Operations on or before January 1, 2006."

Effect of Amendments. — Session Laws 2004-129, s. 20, effective July 1, 2004, in subsection (a), substituted "Office of State Budget and Management" for "Information Resources Management Commission," and deleted the last sentence which read: "A copy of the approved budget shall be submitted to the Joint Select Committee on Information Technology and the Fiscal Research Division."; in subsection (b), substituted "Legislative Oversight" for "Select" in the first sentence, added "and revenues" at the end of the second sentence, and added "The Office shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on expenditures" at the beginning of the third sentence.

§ 147-33.89. Business continuity planning.

(a) Each State agency shall develop and continually review and update as necessary a business and disaster recovery plan with respect to information technology. Each agency shall establish a disaster recovery planning team to develop the disaster recovery plan and to administer implementation of the plan. In developing the plan, the disaster recovery planning team shall do all of the following:

(1) Consider the organizational, managerial, and technical environments in which the disaster recovery plan must be implemented.

(2) Assess the types and likely parameters of disasters most likely to occur and the resultant impacts on the agency's ability to perform its mission.

(3) List protective measures to be implemented in anticipation of a natural or man-made disaster.

(b) Each State agency shall submit its disaster recovery plan on an annual basis to the State Chief Information Officer. (2003-153, s. 2; 2004-129, s. 21.)

Effect of Amendments. — Session Laws 2004-129, s. 21, effective July 1, 2004, deleted "Information Resource Management Commission and the" after "annual basis to the" in subsection (b).

§ 147-33.90. Analysis of State agency legacy systems.

(a) The Office of Information Technology Services shall analyze the State's legacy information technology systems and develop a plan to ascertain the needs, costs, and time frame required for State agencies to progress to more modern information technology systems.

(b) In conducting the legacy system assessment phase of the analysis, the Office shall:

(1) Examine the hierarchical structure and interrelated relationships within and between State agency legacy systems.

(2) Catalog and analyze the portfolio of legacy applications in use in State agencies and consider the extent to which new applications could be used concurrently with, or should replace, legacy systems.

(3) Consider issues related to migration from legacy environments to Internet-based and client/server environments, and related to the availability of programmers and other information technology professionals with the skills to migrate legacy applications to other environments.

(4) Study any other issue relative to the assessment of legacy information technology systems in State agencies.

(c) Upon completion of the legacy system assessment phase of the analysis, the Office shall ascertain the needs, costs, and time frame required to modernize State agency information technology. The Office shall complete this phase of the assessment by January 31, 2005, and shall report its findings and recommendations to the 2005 General Assembly. The findings and recommendations shall include a cost estimate and time line for modernization of legacy information technology systems in State agencies. The Office shall submit an ongoing, updated report on modernization needs, costs, and time lines to the General Assembly on the opening day of each biennial session. (2003-172, s. 1; 2004-129, s. 22.)

Effect of Amendments. — Session Laws 2004-129, s. 22, effective July 1, 2004, deleted "in conjunction with the Information Resources Management Commission" following "Technology Services" in subsection (a); and deleted the former paragraph following subdivision (b)(4) which read: "By March 1, 2004, the Office shall complete the assessment phase of the analysis and shall make a report of the assessment to the Joint Legislative Commission on Governmental Operations (Commission). Thereafter, the Office shall make an ongoing annual report on these matters to the Commission by March 1 of each year."

Part 3. Telecommunications Services.

§ 147-33.91. Telecommunications services; duties of State Chief Information Officer with respect to State agencies.

(a) With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that responsibility, the State Chief Information Officer, in cooperation with affected State agency heads, may:

(1) Provide for the establishment, management, and operation, through either State ownership, contract, or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:

a. Central telephone systems and telephone networks.

b. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.

c. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
d. Satellite services.
e. Closed-circuit TV systems.
f. Two-way radio systems.
g. Microwave systems.
h. Related systems based on telecommunication technologies.
i. The "State Network", managed by the Office, which means any connectivity designed for the purpose of providing Internet Protocol transport of information to any building.

(2) Coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this subsection.

(3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

(4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.

(5) Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

(6) Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

(7) Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

(8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

(9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

(10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

(11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.

(12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

(13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.

(b) The provisions of this section shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s.

59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, ss. 3, 6; 1999-347, s. 4; 1999-434, s. 29; 2000-174, s. 2; 2004-129, s. 23.)

Editor's Note. — Session Laws 2004-129, ss. 47(a) and (b) provide: "(a) Each State agency, with the exception of The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly shall conduct a thorough, agencywide examination and analysis of its Information Technology (IT) infrastructure, including IT expenditures and management functions. The purpose of the examination is to enable the General Assembly, the State CIO, the Office of State Budget and Management, and the State Controller to readily determine the amount of State funds being expended annually on each and all IT functions. As part of this examination, each agency shall review IT contracts with outside vendors, including the adequacy of contract management, and shall consider the implementation of performance measures in the development of future IT contracts. Each agency shall also identify IT functions that could be performed more economically through statewide approach across all agencies. Each agency shall report its plan in a format developed and approved by the State CIO and the Office of State Budget and Management. Reports shall be submitted to the Office of State Budget and Management and the State CIO on or before March 1, 2005."

"(b) The Office of State Budget and Management, in conjunction with the State CIO, the Information Technology Advisory Board, and the State Controller, shall develop a plan to consolidate information technology infrastructure, staffing, and expenditures where a statewide approach would be more economical. The plan shall not include The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly. The plan shall consider agency-specific program needs. The plan shall include specific recommendations to convert contractor FTE to State positions for recurring activities where the contractor positions have been filled for 12 months, beginning July 1, 2003. In developing the recommendations for converting contractor positions, the OSBM shall consider the nature of the work being performed by the contractors, the level of technical expertise required for the work, and whether the use of State positions would be more economical. The plan also shall identify agencies that lack the budgetary and technical resources to operate modern, secure information technology systems, and propose a method of consolidating those information technology systems under a centralized authority, with the approval of the agency. The OSBM shall use reports compiled by each State agency, as required by subsection (a) of this section, in the development of the plan. The office shall report the plan to the Joint Legislative Commission on Governmental Operations on or before January 1, 2006."

Effect of Amendments. — Session Laws 2004-129, s. 23, effective July 1, 2004, designated former undesignated paragraphs to be subsections (a) and (b); in subsection (a) substituted a comma for "may" after "Chief Information Officer" and substituted "may" for "do such of the following things as the State Chief Information Officer deems necessary and advisable" at the end; inserted "contract" after "ownership" in subdivision (a)(1); deleted subdivision (a)(1)(b) which read: "Teleprocessing systems"; deleted subdivision (a)(1)(c), which read "Teletype and facsimile services"; and added subdivision (a)(1)(i); in subdivision (a)(2), deleted the beginning which read: "With the approval of the Information Resources Management Commission" and substituted "subsection" for "section"; and made related changes.

§ 147-33.92. Telecommunications services for local governmental entities and other entities.

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental entities with access to a central telecommunications system or service established under G.S. 147-33.91 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State Chief Information Officer shall establish switched broadband telecommunications services and permit, in addition to State agencies, cities, counties, and other local government entities, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.

(2) MCNC.

(3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.

(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23) a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(10). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, ss. 3, 6; 1999-347, s. 4; 1999-434, s. 29; 2000-174, s. 2; 2004-203, s. 37(b).)

Effect of Amendments. — Session Laws 2004-203, s. 37(b), effective August 17, 2004, substituted "entities" for "units" in the section heading and subsections (a) and (b); made a minor punctuation change in subsection (b); and substituted "47 U.S.C. § 153(10)" for "47 U.S.C. § 153(h)" in the third sentence of the last paragraph.

Part 4. Procurement of Information Technology.

§ 147-33.95. Procurement of information technology.

(a) Notwithstanding any other provision of law, the Office of Information Technology Services shall procure all information technology for State agencies. The Office shall integrate technological review, cost analysis, and procurement for all information technology needs of those State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost-effective. All contract information shall be made a matter of public record after the award of contract. Trade secrets, test data, similar proprietary information, and security information protected under G.S. 132-6.1(c) may remain confidential.

(b) The Office shall have the authority and responsibility, subject to the provisions of this Part, to:

(1) Purchase or contract for all information technology in the State government, or any of its departments, institutions, or agencies covered by this Part. The Office may authorize any State agency covered by this Part to purchase or contract for information technology. The Office or a State agency may use any authorized means, including negotiations, reverse auctions, and the solicitation, offer, and acceptance of electronic bids. G.S. 143-135.9 shall apply to these procedures.

(2) Establish processes, specifications, and standards that shall apply to all information technology to be purchased, licensed, or leased in the

State government or any of its departments, institutions, or agencies covered by this Part.

(3) Comply with the State government-wide technical architecture, as required by the State CIO.

(c) For purposes of this section, "reverse auction" means a real-time purchasing process in which vendors compete to provide goods or services at the lowest selling price in an open and interactive electronic environment. The vendor's price may be revealed during the reverse auction. The Office may contract with a third-party vendor to conduct the reverse auction.

(d) For purposes of this section, "electronic bidding" means the electronic solicitation and receipt of offers to contract. Offers may be accepted and contracts may be entered by use of electronic bidding.

(e) The Office may use the electronic procurement system established by G.S. 143-48.3 to conduct reverse auctions and electronic bidding. All requirements relating to formal and competitive bids, including advertisement, seal, and signature, are satisfied when a procurement is conducted or a contract is entered in compliance with the reverse auction or electronic bidding requirements established by the Office.

(f) The Office shall adopt rules consistent with this section. (1999-434, s. 10; 2000-174, s. 2; 2002-107, s. 4; 2002-159, s. 64(a); 2004-129, s. 24.)

Effect of Amendments. — Session Laws 2004-129, s. 24, effective July 1, 2004, in subsection (a), deleted the former second sentence which read: "For purposes of this section, agency means any department, institution, commission, committee, board, division, bureau, office, officer, or official of the State, unless specifically exempted in this Article" and deleted "Provided, that" at the beginning of the last sentence; rewrote subdivision (b)(1); substituted "State CIO" for "Information Resources Management Commission" at the end of subdivision (b)(3); and substituted "shall" for "may" in subsection (f).

§ 147-33.101. Board of Awards review.

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the Chief State Information Officer, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government-wide technical architecture as established by the State CIO. (1999-434, s. 10; 2000-174, s. 2; 2004-129, s. 25.)

Effect of Amendments. — Session Laws 2004-129, s. 25, effective July 1, 2004, substituted "State CIO" for "Information Resources Management Commission" at the end of subsection (b).

§ 147-33.103. Attorney General contract assistance; rule-making authority.

(a) At the request of the State Chief Information Officer, the Attorney General shall provide legal advice and services necessary to implement this Part.

(b) Repealed by Session Laws 2004-129, s. 26, effective July 1, 2004. (1999-434, s. 10; 2000-174, s. 2; 2004-129, s. 26.)

Effect of Amendments. — Session Laws 2004-129, s. 26, effective July 1, 2004, repealed subsection (b).

Part 5. Security for Information Technology Services.

§ 147-33.110. Statewide security standards.

The State Chief Information Officer shall establish a statewide set of standards for information technology security to maximize the functionality, security, and interoperability of the State's distributed information technology assets, including communications and encryption technologies. The State CIO shall review and revise the security standards annually. As part of this function, the State Chief Information Officer shall review periodically existing security standards and practices in place among the various State agencies to determine whether those standards and practices meet statewide security and encryption requirements. The State Chief Information Officer may assume the direct responsibility of providing for the information technology security of any State agency that fails to adhere to security standards adopted under this Article. Any actions taken by the State Chief Information Officer under this section shall be reported to the Information Technology Advisory Board at its next scheduled meeting. (2001-424, s. 15.2(b); 2004-129, ss. 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2001-424, s. 15.2(b), as G.S. 147-33.82(c). It was recodified as G.S. 147-33.110 by Session Laws 2004-129, s. 12, effective July 1, 2004.

Effect of Amendments. — Session Laws 2004-129, s. 14, added the section heading; substituted "statewide" for "enterprise-wide" throughout the section; added the second sentence; substituted "Information Technology Advisory Board" for "Information Resources Management Commission" and made minor stylistic changes.

§ 147-33.111. State CIO approval of security standards and security assessments.

(a) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as otherwise provided by this section, all information technology security purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State Chief Information Officer in accordance with security standards adopted under this Article.

(b) If the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the North Carolina Community Colleges System develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State Chief Information Officer under this section, then these entities may elect to be governed by their own respective security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology security. The State Chief Information Officer shall consult with the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units, and the North Carolina Community Colleges System in reviewing the security standards adopted by those entities.

(c) Before a State agency may enter into any contract with another party for an assessment of network vulnerability, including network penetration or any similar procedure, the State agency shall notify the State Chief Information Officer and obtain approval of the request. The State Chief Information Officer shall refer the request to the State Auditor for a determination of whether the Auditor's office can perform the assessment and testing. If the State Auditor determines that the Auditor's office can perform the assessment and testing, then the State Chief Information Officer shall authorize the assessment and testing by the Auditor. If the State Auditor determines that the Auditor's office cannot perform the assessment and testing, then with the approval of the State Chief Information Officer and State Auditor, the State agency may enter into a contract with another party for the assessment and testing. If the State agency enters into a contract with another party for assessment and testing, the State agency shall issue public reports on the general results of the reviews. The contractor shall provide the State agency with detailed reports of the security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State Chief Information Officer and the State Auditor with copies of the detailed reports that shall not be disclosed as provided in G.S. 132-6.1(c). (2001-424, s. 15.2(b); 2004-129, ss. 10, 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2001-424, s. 15.2(b), as G.S. 147-33.82(d). It was recodified as G.S. 147-33.111 by Session Laws 2004-129, s. 12, effective July 1, 2004.

Effect of Amendments. — Session Laws 2004-129, ss. 10, 12, and 14, effective July 1, 2004, added the section heading; redesignated the former first paragraph as subsection (a); substituted "section" for "subsection" and substituted "Article" for "section" in subsection (a); redesignated subdivison (1) as subsection (b); repealed subdivision (2); redesignated subdivision (3) as subsection (c); in subsection (c), substituted "the Auditor's office" for "he" in the third sentence, in the fourth sentence, substituted "the Auditor's" for "his," deleted "undertaken pursuant to this subdivision, but the" at the end; in the fifth sentence, added "The" at the beginning, substituted "shall" for "must," deleted "pursuant to this subdivision" following "security issues identified"; and added "that shall not be disclosed as provided in G.S. 132-6.1(c)" at the end of the last sentence.

§ 147-33.112. Assessment of agency compliance with security standards.

The State Chief Information Officer shall assess the ability of each agency to comply with the current security enterprise-wide set of standards established pursuant to this section. The assessment shall include, at a minimum, the rate of compliance with the standards in each agency and an assessment of each agency's security organization, network security architecture, and current expenditures for information technology security. The assessment shall also estimate the cost to implement the security measures needed for agencies to fully comply with the standards. Each agency subject to the standards shall submit information required by the State Chief Information Officer for purposes of this assessment. The State Chief Information Officer shall include the information obtained from the assessment in the State Information Technology Plan required under G.S. 147-33.72B. (2003-153, s. 1(a); 2004-129, ss. 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2003-153, s. 1(a), as G.S. 147-33.82(e1). It was recodified as G.S. 147-33.112 by Session Laws 2004-129, s. 12, effective July 1, 2004.

Effect of Amendments. — Session Laws 2004-129, s. 14, effective July 1, 2004, added the section heading; rewrote the last sentence, which had read: "Not later than May 4, 2004, the Information Resources Management Commission and the State Chief Information Officer shall submit a public report that summarizes the status of the assessment, including the available estimates of additional funding

needed to bring agencies into compliance, to the Joint Legislative Commission on Governmental Operations and shall provide updated assessment information by January 15 of each subsequent year."

§ 147-33.113. State agency cooperation.

(a) The head of each State agency shall cooperate with the State Chief Information Officer in the discharge of his or her duties by:

(1) Providing the full details of the agency's information technology and operational requirements and of all the agency's information technology security incidents within 24 hours of confirmation.

(2) Providing comprehensive information concerning the information technology security employed to protect the agency's information technology.

(3) Forecasting the parameters of the agency's projected future information technology security needs and capabilities.

(4) Designating an agency liaison in the information technology area to coordinate with the State Chief Information Officer. The liaison shall be subject to a criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon its receiving fingerprints from the liaison. If the liaison has been a resident of this State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background report shall be provided to the State Chief Information Officer and the head of the agency. In addition, all personnel in the Office of State Auditor who are responsible for information technology security reviews pursuant to G.S. 147-64.6(c)(18) shall be subject to a criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon receiving fingerprints from the personnel designated by the State Auditor. For designated personnel who have been residents of this State for less than five years, the background report shall include a review of criminal information from both the State and National Repositories of Criminal Histories. The criminal background reports shall be provided to the State Auditor.

(b) The information provided by State agencies to the State Chief Information Officer under this section is protected from public disclosure pursuant to G.S. 132-6.1(c). (2001-424, s. 15.2(b); 2003-153, s. 1(a); 2004-129, ss. 12, 14.)

Editor's Note. — This section was originally enacted by Session Laws 2001-424, s. 15.2(b), as G.S. 147-33.82(f). It was recodified as G.S. 147-33.113 by Session Laws 2004-129, s. 12, effective July 1, 2004.

Effect of Amendments. — Session Laws 2004-129, s. 14, effective July 1, 2004, added the section heading; redesignated the formerly undesignated paragraphs as subsections (a) and (b); and substituted "section" for "subsection" in subsection (b).

ARTICLE 4B.

Business License Information Office.

§§ 147-54.11 through 147-54.19: Repealed by Session Laws 2004-124, s. 13.9A(a), effective July 1, 2004.

ARTICLE 5A.

Auditor.

§ 147-64.6. Duties and responsibilities.

(a) It is the policy of the General Assembly to provide for the auditing of State agencies by the impartial, independent State Auditor.

(b) The duties of the Auditor are independently to examine into and make findings of fact on whether State agencies:

(1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting and auditing; and other necessary elements of legislative or management control.

(2) Are providing financial and other reports which disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of such programs and operations.

(3) Are promptly collecting, depositing, and properly accounting for all revenues and receipts arising from their activities.

(4) Are conducting programs and activities and expending funds made available in a faithful, efficient, and economical manner in compliance with and in furtherance of applicable laws and regulations of the State, and, if applicable, federal law and regulation.

(5) Are determining that the authorized activities or programs effectively serve the intent and purpose of the General Assembly and, if applicable, federal law and regulation.

(c) The Auditor shall be responsible for the following acts and activities:

(1) Audits made or caused to be made by the Auditor shall be conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the United States General Accounting Office, or other professionally recognized accounting standards-setting bodies.

(2) Financial and compliance audits may be made at the discretion of the Auditor without advance notice to the organization being audited. Audits of economy and efficiency and program results shall be discussed in advance with the prospective auditee unless an unannounced visit is essential to the audit.

(3) The Auditor, on his own initiative and as often as he deems necessary, or as requested by the Governor or the General Assembly, shall, to the extent deemed practicable and consistent with his overall responsibility as contained in this act, make or cause to be made audits of all or any part of the activities of the State agencies.

(4) The Auditor, at his own discretion, may, in selecting audit areas and in evaluating current audit activity, consider and utilize, in whole or in part, the relevant audit coverage and applicable reports of the audit staffs of the various State agencies, independent contractors, and federal agencies. He shall coordinate, to the extent deemed practica-

ble, the auditing conducted within the State to meet the needs of all governmental bodies.

(5) The Auditor is authorized to contract with federal audit agencies, or any governmental agency, on a cost reimbursable basis, for the Auditor to perform audits of federal grants and programs administered by the State Departments and institutions in accordance with agreements negotiated between the Auditor and the contracting federal audit agencies or any governmental agency. In instances where the grantee State agency shall subgrant these federal funds to local governments, regional councils of government and other local groups or private or semiprivate institutions or agencies, the Auditor shall have the authority to examine the books and records of these subgrantees to the extent necessary to determine eligibility and proper use in accordance with State and federal laws and regulations.

The Auditor shall charge and collect from the contracting federal audit agencies, or any governmental agencies, the actual cost of all the audits of the grants and programs contracted by him to do. Amounts collected under these arrangements shall be deposited in the State Treasury and be budgeted in the Department of State Auditor and shall be available to hire sufficient personnel to perform these contracted audits and to pay for related travel, supplies and other necessary expenses.

(6) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions, or recommendations he deems appropriate concerning any aspect of such agency's activities and operations.

(7) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited into the general fund as nontax revenue.

(8) The Auditor shall examine as often as may be deemed necessary the accounts kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the General Assembly, with copy of such report to the Governor and Attorney General. In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(9) The Auditor may examine the accounts and records of any bank or financial institution relating to transactions with the State Treasurer, or with any State agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

(10) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various State agencies which are supported partially or entirely from State funds. Such examinations will be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient, or otherwise inadequate, he shall recommend changes to the State Controller. The State Controller shall prescribe

and supervise the installation of such changes, as provided in G.S. 143B-426.39(2).

(11) The Auditor shall, through appropriate tests, satisfy himself concerning the propriety of the data presented in the Comprehensive Annual Financial Report and shall express the appropriate auditor's opinion in accordance with generally accepted auditing standards.

(12) The Auditor shall provide a report to the Governor and Attorney General, and other appropriate officials, of such facts as are in his possession which pertain to the apparent violation of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

(13) At the conclusion of an audit, the Auditor or his designated representative shall discuss the audit with the official whose office is subject to audit and submit necessary underlying facts developed for all findings and recommendations which may be included in the audit report. On audits of economy and efficiency and program results, the auditee's written response shall be included in the final report if received within 30 days from receipt of the draft report.

(14) The Auditor shall notify the General Assembly, the Governor, the Chief Executive Officer of each agency audited, and other persons as the Auditor deems appropriate that an audit report has been published, its subject and title, and the locations, including State libraries, at which the report is available. The Auditor shall then distribute copies of the report only to those who request a report. The copies shall be in written or electronic form, as requested. He shall also file a copy of the audit report in the Auditor's office, which will be a permanent public record; Provided, nothing in this subsection shall be construed as authorizing or permitting the publication of information whose disclosure is otherwise prohibited by law.

(15) It is not the intent of the audit function, nor shall it be so construed, to infringe upon or deprive the General Assembly and the executive or judicial branches of State government of any rights, powers, or duties vested in or imposed upon them by statute or the Constitution.

(16) The Auditor shall be responsible for receiving reports of allegations of the improper governmental activities set forth in G.S. 126-84. The Auditor shall provide a telephone hotline to receive such allegations and informant may choose whether to remain anonymous. The Auditor shall implement the necessary policies and procedures to investigate hotline allegations and recommend appropriate action. When the allegation involves issues of substantial and specific danger to the public health and safety, the Auditor shall notify the appropriate agency immediately. In addition, the Auditor shall publicize the hotline number periodically and shall report findings to the agencies involved.

All records maintained by the State Auditor which involve unsubstantiated allegations of improper governmental activities set forth in G.S. 126-84 shall be destroyed within four years from the date such allegation was received.

(17) The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office.

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has

adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors.

(d) Reports and Work Papers. — The Auditor shall maintain for 10 years a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under his authority. Audit work papers and other evidence and related supportive material directly pertaining to the work of his office shall be retained according to an agreement between the Auditor and State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, and notwithstanding the provisions of G.S. 126-24, pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the Auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations.

Except as provided above, or upon subpoena issued by a duly authorized court or court official, audit work papers shall be kept confidential. (1983, c. 913, s. 2; 1985 (Reg. Sess., 1986), c. 1024, ss. 24, 25; 1987, c. 738, s. 62; 1989, c. 236, s. 2; 1999-188, s. 2; 2001-142, s. 2; 2001-424, ss. 9.1(a), 15.2(c); 2002-126, s. 27.2(b); 2002-159, s. 48; 2004-129, s. 46.)

Effect of Amendments. — Session Laws 2004-129, s. 46, effective July 1, 2004, in subdivision (b)(18), substituted "G.S. 147-33.111(a)" for "G.S. 147-33.82(d)(1) or (2)" in the second sentence, and substituted "G.S. 147-33.111(c)" for "G.S. 147-33.82(d)(3)" in the fifth sentence.

Article 6.

Treasurer.

§ 147-68. To receive and disburse moneys; to make reports.

(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer.

(b) No moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor and Advisory Budget Commission annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

(d1) The Treasurer shall report to the Joint Legislative Commission on Governmental Operations, to the Chairman, Appropriations Base Budget Committee and the Chairman, Appropriations Expansion Budget Committee of the House of Representatives, and to the Chairman, Committee on Appropriations and the Chairman, Committee on Base Budget of the Senate, on a quarterly basis, concerning all investments and deposits made by and through his office. The report shall include a listing of all investments with or on behalf of the State or any of its agencies or institutions and shall include the particular agency or institution, fund, rate of return, duration of the investment, and the amount of deposit on all noninterest bearing accounts. The first report is due 90 days after July 1, 1982, and shall include all investments and deposits made during the 1981-82 fiscal year and all investments made during the first quarter of the 1982-83 fiscal year; thereafter, reports shall be made on a quarterly basis including all investments and deposits made during that reporting period.

(d2) After consulting with the Select Committee on Information Technology and the Joint Legislative Commission on Governmental Operations and after consultation with and approval of the Information Resources Management Commission, the Department of State Treasurer may spend departmental receipts for the 2000-2001 fiscal year to continue improvement of the Department's investment banking operations system, retirement payroll systems, and other information technology infrastructure needs. The Department of State Treasurer shall report by January 1, 2001, and annually thereafter to the following regarding the amount and use of the departmental receipts: the Joint Legislative Commission on Governmental Operations, the Chairs of the General Government Appropriations Subcommittees of both the House of Representatives and the Senate, and the Joint Legislative Committee on Information Technology.

(e) The State Treasurer, in carrying out the responsibilities of this section, shall be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. The State Treasurer, for all other purposes, is subject to Article 1 of Chapter 143 of the General Statutes. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C.S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 65; 1983, c. 913, s. 52; 2000-67, s. 24A; 2003-284, s. 28.2(a); 2004-129, s. 46A.)

Effect of Amendments. — Session Laws 2004-129, s. 46A, effective July 1, 2004, substituted "Joint Legislative" for "Select" in the last sentence of subsection (d2).

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Repeal of provisions of the Executive Budget Act by S.L. 1985-290, §§ 1, 2 and 6 was not intended by the General Assembly to also repeal subsection (e) of this section, by implication; therefore, the State Treasurer is authorized to carry out his responsibilities independent of any fiscal control exercised by the Director of the Budget or the Department of

Administration, except as set forth in G.S.143-25. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon the Auditor's request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in the Treasurer's office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which the Treasurer may deposit or cause to be deposited any of the public funds, and these accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing the Treasurer's official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing the Treasurer's signature to warrants, checks or any other instrument the Treasurer is required by law to sign. The Commissioner of Banks, the bank examiners, and the savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all these depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for these deposits. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C.S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1; 1983, c. 158, s. 4; 1987, c. 751, s. 1; 1989, c. 76, s. 27; 2001-193, s. 16; 2004-203, s. 11.)

Effect of Amendments. — Session Laws 2004-203, s. 11, effective August 17, 2004, made this section gender neutral; substituted "these accounts" for "such accounts" in the second sentence; substituted "Banks, the bank examiners, and the savings" for "Banks and bank examiners, and the Commissioner of Banks and the savings" in the fifth sentence; substituted "these depository" for "such depository" in the sixth sentence; and substituted "these deposits" for "such deposits" in the last sentence.

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:
(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,

(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1,

(17a) North Carolina Veterans Home Trust Fund,

(17b) North Carolina National Guard Pension Fund,

(17c) Retiree Health Premium Reserve Account, and

(17d) The Election Fund.

(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).

(2) General obligations of other states of the United States.

(3) General obligations of cities, counties and special districts in North Carolina.

(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States if the obligations bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which rates the particular security.

(5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular securities.

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) limited partnerships, whether described as limited liability partnerships or limited liability companies; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), they may be invested in preferred or common stocks issued by any company incorporated or otherwise created or located within or outside the United States provided the investments meet the conditions of this subdivision.

The investments authorized under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of

the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total assets of at least fifty million dollars ($50,000,000).

The assets authorized under this subdivision can be invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

a. The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.

b. The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been at least equal to the amount of the dividends paid.

c. In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with.

No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.

d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company if the primary purpose of the partnership or limited liability company is to invest in public or private debt, public or private equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than July 1, 2005. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

(b1) With respect to investments authorized by subsections (b)(8) and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The two public members must have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(c) Repealed by Session Laws 1995, c. 501, s. 2. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c. 1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i); 1995, c. 346, s. 2; c. 501, s. 2; 1997-456, s. 27; 1999-237, s. 27.16; 1999-251, s. 2; 2000-160, s. 2; 2001-444, ss. 2, 3; 2003-12, s. 2; 2004-124, s. 30.22(b).)

Editor's Note. —

Session Laws 2004-124, s. 30.22.(a) and (c) provide: "(a) From funds borrowed from the Escheat Fund pursuant to G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11), the North Carolina Global TransPark Authority shall make a payment of two million five hundred thousand dollars ($2,500,000) to the Escheat Fund as soon as feasible after the effective date of this section and shall not expend or obligate any other funds that were borrowed from the Escheat Fund except after consultation with the Joint Legislative Commission on Governmental Operations on its intent to expend or obligate the funds."

"(c) All interest on funds borrowed from the Escheat Fund pursuant to G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11) and on account with the State Treasurer for the benefit of the North Carolina Global TransPark Authority may only be used to repay the loan."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-138, s. 1.1, provides: "Except after consultation with the Joint Legislative Commission on Governmental Operations on its intent to expend or obligate funds, the North Carolina Global TransPark Authority shall not expend or obligate any funds that were borrowed from the Escheat Fund pursuant to G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11), or any interest earned on those funds."

Effect of Amendments. —
Session Laws 2004-124, s. 30.22(b), effective July 1, 2004, substituted "July 1, 2005" for "September 1, 2004" in the first sentence of subdivision (b)(11).

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Investments made through the North Carolina Equity Investment Fund Pooled Trust and managed by State Street Bank and Trust Company are not subject to the conditions set forth in subdivisions (8)a.-g. of this section. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

Investments in Limited Partnerships or Limited Liability companies. — Authority of the State Treasurer under subdivision (b)(9) of this section to invest in limited partnerships or limited liability companies does not specify or limit the types of investment vehicles in which the limited partnerships or limited liability companies may invest; therefore, investments in derivatives are not prohibited. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

Economic Development. — As long as an investment by the State Treasurer is authorized by this section and G.S.147-69.3, it is not disqualified by the fact that it might indirectly facilitate economic development. See opinion of Attorney General to Ralph Campbell, Jr., State Auditor, 2002 N.C.A.G. 31 (12/12/02).

ARTICLE 6A.

Cash Management.

§ 147-86.11. Cash management for the State.

ITS Maintenance Agreement Pilot Project. — Session Laws 2003-284, s. 21.2(a) and (b), as amended by Session Laws 2004-124, s. 22.1, provides: "(a) Notwithstanding the cash management provisions of G.S. 146-86.11 [G.S. 147-86.11], the State Controller may authorize the Office of Information Technology Services (ITS) to purchase not more than four infrastructure maintenance agreements for periods not exceeding two years where the terms of those maintenance agreements require payment of the full purchase price at the beginning of the maintenance period. The State Controller shall not authorize the agreements authorized by this section unless all of the following conditions are met:

"(1) The proposed infrastructure maintenance agreement is entered into after June 30, 2004, and before July 1, 2005.

"(2) The State Controller receives conclusive evidence that the proposed infrastructure agreement would be more cost-effective than any similar agreement that complies with G.S. 146-86.11 [G.S. 147-86.11].

"(3) The State Controller verifies that the savings resulting from the proposed infrastructure agreement will be passed on to users in the form of lower rates for ITS services.

"(4) The purchase of the proposed maintenance agreement complies in all other respects with applicable statutes and rules.

"(5) ITS shall make adjustments of excess revenue, based on IRMC-approved rates, over allowable costs.

"(b) The State Controller shall provide full justification for any authorizations granted under this section to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the General Assembly within 60 day safter the authorization is granted."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Article 6C.

Health and Wellness Trust Fund.

§ 147-86.30. Health and Wellness Trust Fund established.

(a) Fund Established. — There is established the Health and Wellness Trust Fund in the Office of the State Treasurer to be used to develop a comprehensive plan to finance programs and initiatives to improve the health and wellness of the people of North Carolina. As used in this Article, the term "Fund" means the Health and Wellness Trust Fund. It is the intent of the General Assembly that the funds provided pursuant to this Article to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health and wellness programs.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to directives of the Commission. The Commission may expend moneys in the Fund only as provided in subsections (c) and (d) of this section.

(c) Priority Use of Funds. — As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-124. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%).

(d) Use of Remaining Funds. — The Commission may expend or commit moneys in the Fund in a fiscal year only after the payment required by subsection (c) of this section has been made.

(e) Fund Purposes. — Moneys from the Fund may be used for any of the following purposes:

(1) To address the health needs of vulnerable and underserved populations in North Carolina.

(2) To fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.

(3) To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use. The plan shall include measurable health and wellness objectives and a proposed timetable for achieving these objectives. In developing the plan, the Commission shall consider all facets of health, including prevention, education, treatment, research, and related areas.

(f) Limit on Operating and Administrative Expenses. — No more than two and one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning July 1 or a total of one million dollars ($1,000,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Commission and its staff. All administrative expenses of the Commission shall be paid from the Fund. (2000-147, s. 2; 2004-179, s. 1.3.)

Editor's Note. —

Session Laws 2003-284, s. 2.2(c), as amended by Session Laws 2004-124, s. 2.2(b), provides: "Notwithstanding G.S. 143-16.4(a1), of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2003-2004 fiscal year, the sum of twenty million dollars ($20,000,000) that would otherwise be deposited in the Fund Reserve established by G.S. 147-86.30(c) and five million ($5,000,000) of the funds that are not reserved pursuant to G.S. 147-86.30(c) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2003-2004 fiscal year.

"Notwithstanding G.S. 143-16.4(a1) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2004-2005 fiscal year, the sum of twenty-five million dollars ($25,000,000) shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2004-2005 fiscal year. Any funds remaining after the transfer to the General Fund shall be used in accordance with G.S. 147-86.30."

Session Laws 2004-179, s. 1, provides: "This part may be cited as the State Capital Facilities Act of 2004."

Session Laws 2004-179, s. 8.3, is a severability clause.

Effect of Amendments. — Session Laws 2004-179, s. 1.3, effective July 1, 2004, substituted "to" for "that shall" preceding "be used" in subsection (a); rewrote subsections (c) and (d); and deleted "sum" after "total" in the first sentence of subsection (f).

§ 147-86.35. Health and Wellness Trust Fund; reporting requirements.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee regarding implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. The annual report shall also include a summary of each recipient's annual report submitted to the Health and Wellness Trust Fund Commission pursuant to G.S. 147-86.31(b) and an analysis of progress toward the goals and objectives of any comprehensive, community-based plan established pursuant to G.S. 147-86.30(e)(3). A written copy of the annual report shall also be sent to the Legislative Library by November 1 each year. Written reports shall also be sent on a quarterly basis to the Joint Legislative Commission on Governmental Operations.

(b) **(Effective until July 1, 2005)** Any non-State corporation, organization, or institution that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143-6.1.

(b) **(Effective July 1, 2005)** Any non-State entity as that term is defined in G.S. 143-6.2 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143-6.2. (2000-147, s. 2; 2004-196, s. 3.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 2005. The second version of subsection (b) set out above is effective July 1, 2005.

Effect of Amendments. — Session Laws 2004-196, s. 3, effective July 1, 2005, and applicable to appropriations and grants made for fiscal years beginning on or after that date, in subsection (b), substitutes "entity as that term is defined in G.S. 143-6.2" for "corporation, organization, or institution," and substitutes "G.S. 143-6.2" for "G.S. 143-6.1."

Chapter 148.

State Prison System.

Article 2.

Prison Regulations.

Sec.
148-22.2. Procedure when surgical operations on inmates are necessary.

Article 3.

Labor of Prisoners.

148-32.1. Local confinement, costs, alternate facilities, parole, work release.

Sec.
148-46.2. Procedure when consent is refused by prisoner.

Article 1.

Organization and Management.

§ 148-2. Prison moneys and earnings.

Editor's Note. —

Session Laws 2003-284, s. 16.10, as amended by Session Laws 2004-124, s. 17.4, provides: "(a) Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of nine hundred thousand dollars ($900,000) in the 2003-2004 fiscal year and up to the sum of six hundred fifty thousand dollars ($650,000) in the 2004-2005 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds."

"(b) Notwithstanding the provisions of subsection (a) of this section relating to prior reporting, the Department of Correction may use up to the sum of two hundred ninety thousand dollars ($290,000) in the 2004-2005 fiscal year from funds available to the Department to provide the State match needed in order to receive the following federal grants:

"(1) Enhanced Offender Information for Law Enforcement, to provide new software to facilitate recovery of prison escapees;

"(2) Job Start II, a statewide program to assist offenders with securing and retaining jobs; and

"(3) Security Threat Group Management Unit, to establish nine time-limited positions and funding to respond to security threat groups (gangs) in prison and in communities. The nine positions are: one Correctional Program Director position, two Correctional Program Supervisor positions, one Staff Psychologist II position, two Correctional Behavior Specialist II positions, two Registered Nurse positions, and one Office Assistant III position.

"The funds authorized for use in this subsection apply toward the six hundred fifty thousand dollar ($650,000) limitation established in subsection (a) of this section."

Article 2.

Prison Regulations.

§ 148-22.2. Procedure when surgical operations on inmates are necessary.

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and

skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform an operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of the institution. No operation shall be performed without the consent of the inmate; or, if the inmate is a minor, without the consent of a responsible member of the inmate's family, a guardian, or one having legal custody of the minor; or, if the inmate be non compos mentis, then the consent of a responsible member of the inmate's family or of a guardian shall be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General Statutes, G.S. 90-21.13, and G.S. 90-21.16.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of the inmate's family, guardian, or one having legal custody of the inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this section, the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for the operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed. (1919, c. 281, ss. 1, 2; C.S., ss. 7221, 7222; 1947, c. 537, s. 24; 1951, c. 775; 1957, c. 1357, s. 1; 1981, c. 307, ss. 2, 3; 2003-13, s. 8; 2004-203, s. 53(a).)

Effect of Amendments. — Session Laws 2004-203, s. 53(a), effective August 17, 2004, in the last sentence of the first paragraph, substituted "G.S. 90-21.16" for "G.S. 90-21.14" and made minor punctuation and stylistic changes; and substituted "section" for "Article" in the last paragraph.

Article 3.

Labor of Prisoners.

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.

(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those inmates committed to the custody of the local confinement facility to serve criminal sentences of 30 days or more. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to an inmate as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the inmate is incarcerated, provided the inmate was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

In order to obtain reimbursement for any of the expenses authorized by this section, a local confinement facility shall submit an invoice to the Department within 90 days of the date of commitment by the sentencing court.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner sentenced for a conviction of impaired driving under G.S. 20-138.1 is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Post-Release Supervision and Parole Commission so that the prisoner will be eligible for parole pursuant to G.S. 15A-1371.

(d) When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to a recommendation of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the Department of Correction, which shall disburse the earnings as determined under G.S. 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to an order of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the clerk of the court that sentenced the prisoner or to the Department of Correction, as provided in the prisoner's commitment order. The clerk or the Department, as appropriate, shall disburse the earnings as provided in the prisoner's commitment order. Upon agreement between the Department of Correction and the custodian of the local confinement facility, however, the clerk may disburse to the local confinement facility the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount shall be set off against the reimbursement to be paid by the Department to the local confinement facility pursuant to G.S. 148-32.1(a).

(e) Upon entry of a prisoner serving a sentence of imprisonment for impaired driving under G.S. 20-138.1 into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Post-Release Supervision and Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 15A-1371. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Post-Release Supervision and Parole Commission. The Post-Release Supervision and Parole Commission shall approve a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2; 1981, c. 859, s. 25; 1985, c. 226, s. 3(1), (2); 1985 (Reg. Sess., 1986), c. 1014, ss. 199, 201(e); 1987, c. 7, s. 2, 6; 1987 (Reg. Sess., 1988), c. 1037, s. 120; c. 1100, s. 17.4(a); 1989, c. 1, s. 2; c. 761, s. 3; 1991, c. 217, s. 6; 1993, c. 538, s. 33; 1994, Ex. Sess., c. 14, s. 65; c. 24, s. 14(b); 1995, c. 324, s. 19.9(f); 1997-456, s. 23; 2004-199, s. 48; 2004-203, s. 54.)

Effect of Amendments. — Session Laws 2004-203, s. 54, effective August 17, 2004, inserted "criminal" preceding "sentences" in the first sentence and added the last sentence in subsection (a).

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.

CASE NOTES

III. Practice and Procedure.

III. PRACTICE AND PROCEDURE.

To prove felonious escape under G.S. 148-45(b)(2), the State needed to prove that defendant was charged with a felony and had been committed to the custody of the Department of Correction; testimony concerning the kind of crimes for which defendant was sentenced to prison was relevant and competent evidence, and defendant's conviction was affirmed. State v. McDonald, — N.C. App. —, 593 S.E.2d 793, 2004 N.C. App. LEXIS 510 (2004).

§ 148-46.2. Procedure when consent is refused by prisoner.

When the Secretary of Correction finds as a fact that the injury to any prisoner was willfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings have been reduced to writing and entered into the prisoner's records as a permanent part thereof, then the chief medical officer of the prison hospital or prison institution shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this section, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. Any treatment of self-inflicted injuries shall also be

subject to the provisions of G.S. 90-21.13 and G.S. 90-21.16. (1959, c. 1196; 1967, c. 996, s. 15; 1969, c. 982; 1973, c. 1262, s. 10; 1981, c. 307, ss. 4-7, 9; 2004-203, s. 53(b).)

Effect of Amendments. — Session Laws 2004-203, s. 53(b), effective August 17, 2004, substituted "section" for "Article" and "G.S. 90-21.16" for "90-21.14" in the last paragraph.

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150B-1. Policy and scope.

Article 2A.

Rules.

Part 2. Adoption of Rules.

150B-21.1. Procedure for adopting a temporary rule.

Sec.
150B-21.3. Effective date of rules.

Article 3.

Administrative Hearings.

150B-33. Powers of administrative law judge.

Article 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.

(3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

(7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2, 3, 4, and 5 of Article 3 of Chapter 135 of the General Statutes.

(8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.

(9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.

(10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.

(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).

(12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.

(13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29.

(3), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.

(12) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan with respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.

(13) The Teachers' and State Employees' Comprehensive Major Medical Plan with respect to determinations by the Executive Administrator and Board of Trustees, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, contin-

ued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(14) The Department of Crime Control and Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.

(f) **(Effective until December 31, 2006)** Exemption for the University of North Carolina. — Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina.

(f) **(Effective December 31, 2006)** Exemption from All But Judicial Review. — No Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16; 2003-226, s. 17(b); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 1.3; 2004-88, s. 1(e).)

Subsecton (f) Set Out Twice.—

The first version of subsection (f) set out above is effective until December 31, 2006. The second version of subsection (f) set out above is effective December 31, 2006.

Effect of Amendments. —

Session Laws 2003-435, 2nd Ex. Sess., s. 1.3, effective December 16, 2003, added subdivision (d)(12).

Session Laws 2004-88, s. 1(e), effective June 30, 2004, added subdivision (d)(13).

CASE NOTES

Department of Health and Human Services, Division of Medical Assistance. — Pursuant to G.S. 150B-1(c), the North Carolina Department of Health and Human Services, Division of Medical Assistance, is an Article 3 agency and thereby subject to the mandates of G.S. 150B-44. Albemarle Mental Health Ctr. v. N.C. HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003).

Applied in Univ. of N.C. at Chapel Hill v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401, 2003 N.C. App. LEXIS 2277 (2003).

Cited in CVS Pharm., Inc. v. N.C. Bd. of Pharm., 162 N.C. App. 495, 591 S.E.2d 567, 2004 N.C. App. LEXIS 176 (2004).

§ 150B-2. Definitions.

CASE NOTES

"Person Aggrieved". —

Where a trade association, adversely affected by certain licensing procedures, was a "person aggrieved" under G.S. 150B-2(6), and where licensing issues were deemed to be "contested cases" under G.S. 150B-2(2), (3) and G.S. 150B-22, the association had standing to bring a contested case challenging the state agencies' general permitting procedures for wood chip mills. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 357 N.C. 640, 588 S.E.2d 880, 2003 N.C. LEXIS 1413 (2003).

Substantial Evidence to Support Licensing Suspension. — Substantial evidence un-

der G.S. 150B-2(8b) supported the Board of Dental Examiner's findings that (1) an orthodontist's treatment of a patient was untimely and that such untimeliness was a breach of the requisite standard of care for dentists under G.S. 90-41; and (2) the orthodontist's treatment of another patient was likewise negligent because the Board could reasonably have concluded that the standard of care required the use of photographs as a means to track the progress of orthodontic case. Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764, 2004 N.C. LEXIS 207 (2004).

Cited in N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004); Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004).

Article 2A.

Rules.

Part 1. General Provisions.

§ 150B-18. Scope and effect.

Editor's Note. —

Session Laws 2004-124, s. 22A.1.(a), provides: "All personnel and equipment presently assigned to the Rules Review Commission for the purpose of carrying out Article 2A of Chapter 150B of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a). The Chief Administrative Law Judge shall be responsible for the hiring of the Director and other staff of the Rules Review Commission."

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. — An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators

Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13), (14) Reserved.

(15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.

(16) **(Expires July 1, 2005)** The need for the Department of Transportation to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(a3) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and

why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. — When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. — A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. — A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. — When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54; 1995, c. 507, s. 27.8(c); 1996, 2nd Ex. Sess., c. 18, ss. 7.10(c), (d); 1997-403, ss. 1-3; 1998-127, s. 2; 1998-212, s. 26B(h); 1999-434, s. 16; 1999-453, s. 5(a); 2000-69, ss. 3, 5; 2000-148, ss. 4, 5; 2001-126, s. 12; 2001-421, s. 2.3; 2001-424, ss. 27.17(b), 27.22(a); 2001-487, s. 21(g); 2002-97, ss. 2, 3; 2002-164, s. 4.6; 2003-184, s. 3; 2003-229, s. 2; 2003-413, ss. 27, 29; 2004-156, s. 1.)

Editor's Note. —

Session Laws 2003-284, s. 10.19(a)(22), as amended by Session Laws 2004-124, s. 10.4, contains provisions regarding the following services and payment bases: 1) services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS); and 2) for children eligible for certain EPSDT services; and 3) certain services for Medicaid-eligible adults. The subdivision further provides: "Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5, contains a severability clause.

Session Laws 2004-148, s. 3(a), which expires June 30, 2005, provides: "The Secretary of Transportation may adopt temporary rules in accordance with G.S. 150B-21.1 to implement the provisions of G.S. 136-28.1(k) governing the acceptance of bids by electronic means. The authority granted to the Secretary by this section shall expire when the permanent rules necessary to implement this provision are adopted."

Effect of Amendments. —

Session Laws 2004-156, s. 1, effective August 2, 2004, in subdivision (a)(6), substituted "a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement" for "the rule to implement" and added the language beginning "and the proposed rule" at the end; redesignated subsection (a1) as subdivision (a)(16); rewrote subdivision (a)(16); inserted the subsection (a3) designation and the second sentence of subsection (a3); and inserted the subsection (b1), (b2), (b3) and (c1) designations.

§ 150B-21.3. Effective date of rules.

(a) Temporary and Emergency Rules. — A temporary rule or an emergency rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. — A permanent rule approved by the Commission becomes effective on the first day of the month following the month the rule is approved by the Commission, unless the Commission received written objections to the rule in accordance with subsection (b2) of this section, or unless the agency that adopted the rule specifies a later effective date.

(b1) Delayed Effective Dates. — If the Commission received written objections to the rule in accordance with subsection (b2) of this section, the rule becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill enacted into law before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

(b2) Objection. — Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. The Commission shall notify the agency that the rule is subject to legislative disapproval on the day following the day it receives 10 or more written objections. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register. If the Commission receives objections from 10 or more persons clearly requesting review by the legislature, and the rule objected to is one of a group of related rules adopted by the agency at the same time, the agency that adopted the rule may cause any of the other rules in the group to become effective as provided in subsection (b1) of this section by submitting a written statement to that effect to the Commission before the other rules become effective.

(c) Executive Order Exception. — The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission

but the effective date of which has been delayed in accordance with subsection (b1) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill enacted into law on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill enacted into law within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(c1) Fees. — Notwithstanding any other provision of this section, a rule that establishes a new fee or increases an existing fee shall not become effective until the agency has complied with the requirements of G.S. 12-3.1.

(d) Legislative Day and Day of Adjournment. — As used in this section:

(1) A "legislative day" is a day on which either house of the General Assembly convenes in regular session.

(2) The "day of adjournment" of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.

(3) The "day of adjournment" of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

(e) OSHA Standard. — A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

(f) Technical Change. — A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(e); 1995 (Reg. Sess., 1996), c. 742, s. 43; 1996, 2nd Ex. Sess., c. 18, s. 7.10(f); 1997-34, s. 3; 2001-487, s. 80(b); 2002-97, s. 5; 2003-229, s. 5; 2004-156, ss. 2, 3.)

Effect of Amendments. —

Session Laws 2004-156, ss. 2 and 3, effective August 2, 2004, added "or unless the agency that adopted the rule specifies a later effective date" at the end of subsection (b); and in subsection (b2), inserted "no later than 5:00 P.M. of the day following the day the commission approves the rules" in the third sentence, and added the fourth and sixth sentences.

ARTICLE 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

Dispute as "Contested Case". — Where a trade association, adversely affected by certain licensing procedures, was a "person aggrieved" under G.S. 150B-2(6), and where licensing issues were deemed to be "contested cases" under G.S. 150B-2(2), (3) and G.S. 150B-22, the association had standing to bring a contested case challenging the state agencies' general permitting procedures for wood chip mills. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 357 N.C. 640, 588 S.E.2d 880, 2003 N.C. LEXIS 1413 (2003).

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

CASE NOTES

Review of Agency Decision. — Although a trial court properly reviewed, under G.S. 150B-51(b)(5), a final agency decision of a contested case petition filed pursuant to G.S. 150B-23, the trial court incorrectly applied the standard of review by making its own findings of fact on unappealed issues. Town of Wallace v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 49, 584 S.E.2d 809, 2003 N.C. App. LEXIS 1673 (2003).

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;

(3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;

(3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules.

(11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay.

(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, ss. 5, 9, 10, 26; 1987 (Reg. Sess., 1988), c. 1111, ss. 18, 19; 1991, c. 35, s. 5; 2000-190, s. 5; 2004-156, s. 4.)

Effect of Amendments. — Session Laws 2004-156, s. 4, effective October 1, 2004, and applicable to contested cases commenced on or after that date, added subdivision (b)(12).

CASE NOTES

Cited in Ji-Da Dai v. Univ. of N.C., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 15880 (M.D.N.C. Sept. 2, 2003).

§ 150B-36. Final decision.

CASE NOTES

Local Appointing Authority. —

In discrimination cases, G.S. 126-37(b1) and G.S. 150B-36 provide that when the State Personnel Commission makes a finding of discrimination, this is binding upon the local appointing authority; the case is then subject to judicial review. Due process concerns are not as strong in discrimination cases because the local appointing authority will never have an opportunity to reverse a finding of discrimination by the State Personnel Commission. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Failure to Adequately Explain Rejection of Administrative Law Judge's Decision. — In light of the fact that the North Carolina Department of Health and Human Services had never revoked licenses of ambulance providers for understaffing their ambulances and had no guidelines for such license revocation, the Department failed to explain adequately both its revocation of a provider's license for understaffing and its rejection of an administrative law judge's decision to stay revocation, as required by G.S. 150B-36(b1). Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

ARTICLE 3A.

Other Administrative Hearings.

§ 150B-41. Evidence; stipulations; official notice.

CASE NOTES

Applied in Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764, 2004 N.C. LEXIS 207 (2004).

§ 150B-42. Final agency decision; official record.

CASE NOTES

Applied in Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764, 2004 N.C. LEXIS 207 (2004).

ARTICLE 4.

Judicial Review.

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

CASE NOTES

Decision Held Unreasonably Delayed. — Since the North Carolina Department of Health and Human Services, Division of Medical Assistance (HHS), did not properly extend the deadline under G.S. 150B-44 for issuing a final decision regarding an administrative law judge's recommendation that it had improperly withheld Medicaid reimbursements, the judgment of the trial court that HHS adopted the recommendation was affirmed on appeal. Albemarle Mental Health Ctr. v. N.C. HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003).

Good Cause. — It is the responsibility of an agency governed by G.S. 150B-44 to articulate "good cause" for extending the final decision deadline when there is no agreement by the parties to extend the deadline. Albemarle Mental Health Ctr. v. N.C. HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003).

Applicablity. — Pursuant to G.S. 150B-1(c), the North Carolina Department of Health and Human Services, Division of Medical Assistance, is an Article 3 agency and thereby subject to the mandates of G.S. 150B-44. Albemarle Mental Health Ctr. v. N.C. HHS, 159 N.C. App. 66, 582 S.E.2d 651, 2003 N.C. App. LEXIS 1422 (2003).

Waiver. — Forestry association that participated in hearings conducted by the North Carolina Environmental Management Commission (EMC) to review an administrative law judge's (ALJ's) decision waived its claim that the EMC lost its power to review the ALJ's decision, by conducting the hearings beyond the time limits prescribed by G.S. 150B-44, when it failed to make its claim to the EMC. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

Cited in County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

CASE NOTES

Cited in Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764, 2004 N.C. LEXIS 207 (2004).

§ 150B-51. Scope and standard of review.

CASE NOTES

I. General Consideration.
II. Exceeding Statutory Authority or Jurisdiction.
IV. "Whole Record" Test.
V. Arbitrary or Capricious Findings, Decisions, etc.

I. GENERAL CONSIDERATION.

Statement of Mandatory Standard of Review Not Required. — Although an agency contended that a trial court's failure to state the standard of review which the trial court applied to its review of an agency decision precluded meaningful appellate review, the agency decision rejected an administrative law judge's decision and thus, under G.S. 150B-51(c), de novo review was mandatory and the trial court was not required to state the standard. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

De Novo Review Permits New Findings of Fact. — Under G.S. 150B-51(c), a trial court is permitted to make its own findings of fact, even though neither party objects to the administrative findings. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

Review by Court of Appeals. —

Appellate court remanded the trial court's judgment that the Director of the North Carolina Division of Water Quality acted lawfully when he excluded certain wood chip mills from coverage under a storm water general permit because the record did not show that the trial court applied the proper standard of review. N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., 162 N.C. App. 467, 591 S.E.2d 549, 2004 N.C. App. LEXIS 178 (2004).

Review of Discrimination Cases. — In a discrimination case, the appellate court reviews the ALJ's opinion, as adopted without alteration by the State Personnel Commission, the local appointing authority, and trial court, for errors of law, violations of constitutional provisions, and whether the decision was arbitrary and capricious or an abuse of discretion; all other errors are deemed abandoned. Enoch v. Alamance County Dep't of Soc. Servs., — N.C. App. —, 595 S.E.2d 744, 2004 N.C. App. LEXIS 810 (2004).

Applied in Watkins v. N.C. State Bd. of Dental Exam'rs, 358 N.C. 190, 593 S.E.2d 764, 2004 N.C. LEXIS 207 (2004).

Cited in Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004).

II. EXCEEDING STATUTORY AUTHORITY OR JURISDICTION.

Order Not In Excess of Statutory Powers. —

Appellate court found that the superior court, which initially reviewed a decision of the Board of Pharmacy reprimanding a permitee pharmacy chain for negligent acts of its licensed pharmacists, had not erred in finding no arbitrary or capricious action by the Board in choosing a sanction; case law already made it clear that the chain could be vicariously responsible for the pharmacists' actions, and so any sanction listed as applicable to a pharmacist could also be applied against the chain. CVS Pharm., Inc. v. N.C. Bd. of Pharm., 162 N.C. App. 495, 591 S.E.2d 567, 2004 N.C. App. LEXIS 176 (2004).

IV. "WHOLE RECORD" TEST.

Agency's Judgment Must Be Affirmed If Supported by Competent Evidence. —

Trial court erred in applying the whole record test when it reversed a decision of the North Carolina Mining Commission, approving the North Carolina Department of Environment and Natural Resources' (DENR) revocation of petitioner's permit under the Mining Act of 1971, G.S. 74-46 et seq., because, contrary to the trial court's conclusion, the DENR presented substantial evidence that petitioner's

mining operations had a significant adverse impact on the Appalachian Trail where a witness testified to the impact, the DENR presented three analyses submitted by their consultants reporting in detail the negative impacts, and petitioner submitted no evidence to the contrary. Clark Stone Co. v. N.C. Dep't of Env't & Natural Res., — N.C. App. —, 594 S.E.2d 832, 2004 N.C. App. LEXIS 726 (2004).

Improper Application. — Although a trial court properly reviewed, under G.S. 150B-51(b)(5), a final agency decision of a contested case petition filed pursuant to G.S. 150B-23, the trial court incorrectly applied the standard of review by making its own findings of fact on unappealed issues. Town of Wallace v. N.C. Dep't of Env't & Natural Res., 160 N.C. App. 49, 584 S.E.2d 809, 2003 N.C. App. LEXIS 1673 (2003).

V. ARBITRARY OR CAPRICIOUS FINDINGS, DECISIONS, ETC.

Action Held Arbitrary and Capricious. —

Where the North Carolina Department of Health and Human Services had never before revoked licenses of ambulance providers for understaffing their ambulances, had no guidelines for such license revocation, and failed to explain adequately its rejection of an administrative law judge's decision to stay revocation, the Department's revocation of a provider's license for understaffing was arbitrary and capricious. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

§ 150B-52. Appeal; stay of court's decision.

CASE NOTES

Scope of Appellate Review. —

Appellate court found that the superior court, which initially reviewed a decision of the Board of Pharmacy reprimanding a permitee pharmacy chain for negligent acts of its licensed pharmacists, had not erred in finding no arbitrary or capricious action by the Board in choosing a sanction; case law already made it clear that the chain could be vicariously responsible for the pharmacists' actions, and so any sanction listed as applicable to a pharmacist could also be applied against the chain. CVS Pharm., Inc. v. N.C. Bd. of Pharm., 162 N.C. App. 495, 591 S.E.2d 567, 2004 N.C. App. LEXIS 176 (2004).

Substantial Evidence Found. — Where the trial court made new findings of fact upon de novo review of an administrative decision, the findings were supported by substantial evidence since they were consistent with the testimony of witnesses at a hearing before the administrative law judge. Cape Med. Transp., Inc. v. N.C. HHS, 162 N.C. App. 14, 590 S.E.2d 8, 2004 N.C. App. LEXIS 17 (2004).

Remand for Further Findings. — Denial of Medicaid benefits to an undocumented immigrant was reversed and remanded for further findings as the findings were inadequate to support the conclusions of law that the Medicaid benefits for rehabilitative services and chemotherapy, following surgery for medullary non-Hodgkin's lymphoma and spinal cord malignancy, were not to cover the costs of an emergency medical condition. Luna v. Div. of Soc. Servs., 162 N.C. App. 1, 589 S.E.2d 917, 2004 N.C. App. LEXIS 51 (2004).

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Alamance (office of coroner abolished): 1975, c. 577; Alleghany (office of coroner abolished): 1979, c. 29; Anson (office of coroner abolished): 1975, c. 270; (as to Chapter 152) Ashe (office of coroner abolished): 1998-90, s. 3; Bertie (office of coroner abolished): 1979, c. 794; Buncombe (assistant coroner): 1963, c. 358; Burke (assistant coroner): 1963, c. 952; Catawba: 1973, c. 354 (Chapter 152 inapplicable); Cherokee (office of coroner abolished): 1997, c. 49, s. 2; Chowan (office of coroner abolished): 1979, 2nd Sess., c. 1163; Clay (office of coroner abolished): 1993, c. 75, s. 1; Cleveland: 1967, c. 431; Craven (office of coroner abolished): 1973, c. 1049; Cumberland (office of coroner abolished): 1979, c. 794; Davidson (office of coroner abolished): 1973, c. 1049; Davie (office of coroner abolished): 1973, c. 1146; Duplin (office of coroner abolished): 1979, c. 231; Forsyth (assistant coroner): 1955, c. 95, s. 1; Franklin (office of coroner abolished): 1975, c. 333; Gaston (assistant coroner): 1973, c. 1371; 1975, c. 201; (as to Chapter 152;office of coroner abolished) 1998-90, ss. 1,3; Greene (office of coroner abolished): 1985, c. 165; Halifax (office of coroner abolished): 1993, c. 36; Harnett (office of coroner abolished): 1981 (Reg. Sess., 1982), c. 1144; Hertford (office of coroner abolished): 1979, c. 281; Iredell: 1965, c. 159; Jackson (office of coroner abolished): 1981 (Reg. Sess., 1982), c. 1132; Johnston (office of coroner abolished): 2004-18; (as to Chapter 152) Martin (effective upon the expiration of the term of the current coroner): 1998-145; McDowell (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 1; Moore (office of coroner abolished effective July 1, 1984): 1983, c. 36; 1985, c. 236; New Hanover (office of coroner abolished, effective December 1, 1986): 1983, c. 36; 1985, c. 236; Northampton, Orange, Pender and Perquimans (office of coroner abolished): 1973, c. 1146; Pitt: 1963, c. 330; Randolph: 1965, c. 754, s. 1; Richmond (office of coroner abolished): 1981, c. 829; Robeson (office of coroner abolished): 1997, c. 51; (as to Chapter 152) Rockingham (office of coroner abolished): 1998-90, s. 3; 1998-145; Rowan (office of coroner abolished): 1985, c. 40; Sampson (office of coroner abolished): 1981 (Reg. Sess., 1982), c. 1190; Scotland (office of coroner abolished): 1993, c. 272, s. 1 (effective upon the expiration of the current term of office); Stokes (office of coroner abolished): 1977, c. 348; Surry (assistant coroner): 1953, c. 291; (office of coroner): 1973, c. 37; Tyrrell (office of coroner reestablished): 1977, 2nd Sess., c. 1172; Wake: 1957, c. 638; Wilkes (office of coroner abolished; effective upon the expiration of the term of the current coroner): 2004-51; Yancey (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 4.

Chapter 153A.

Counties.

Article 2.

Corporate Powers.

Sec.
153A-15.1. Agreement to make payment in lieu of future ad valorem taxes required before wetlands acquisition by a unit of local government.

Article 6.

Delegation and Exercise of the General Police Power.

153A-143. Regulation of outdoor advertising.

Article 7.

Taxation.

153A-155. Uniform provisions for room occupancy taxes.

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

153A-225. Medical care of prisoners.

Article 16.

County service districts; county research and production service districts; county economic development and training districts.

Part 3. Economic Development and Training Districts.

Sec.
153A-317.11. Purpose and nature of districts.
153A-317.17. Taxes authorized; rate limitation.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

153A-321. Planning boards.
153A-322. Supplemental powers.
153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

Article 23.

Miscellaneous Provisions.

153A-442. Animal shelters.

Article 2.

Corporate Powers.

§ 153A-11. Corporate powers.

CASE NOTES

I. General Consideration.
II. Suits By and Against County.

I. GENERAL CONSIDERATION.

Authority to Allow Payment of Insurance Premiums for Disability Retiree. — In an action by a retired police officer seeking continuation of insurance payments by the county; individual county commissioners did not have authority to bind the county to such payments pursuant to G.S. 153A-92 or G.S. 153A-11, and a county manager did not did not have authority pursuant to G.S. 153A-82 to bind the county to an agreement to pay the insurance premiums without an express delegation of power by the Board of County Commissioners. Denson v. Richmond County, 159 N.C. App. 408, 583 S.E.2d 318, 2003 N.C. App. LEXIS 1498 (2003).

II. SUITS BY AND AGAINST COUNTY.

Disability Discrimination Claim. — District court declined to grant a county's Fed. R. Civ. P. 12(b)(1) motion to dismiss a former employee's disability discrimination claims where the county had the capacity to be sued under G.S. 153A-11 and as a county, it was not entitled to sovereign immunity under the Eleventh Amendment. Rivera v. Guilford County, 286 F. Supp. 2d 635, 2003 U.S. Dist. LEXIS 18214 (M.D.N.C. 2003).

§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

Local Modification. — Anson, Bertie, Buncombe, Burke, Caldwell: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Caswell: 1981, c. 941, s. 2; Cleveland, Davidson, Davie, Forsyth: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Granville: 1981, c. 941, s. 2; Kannapolis: 1997, c. 295; Martin, Montgomery: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Person: 1981, c. 941, s. 2; Rowan, Transylvania: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Vance, Warren: 1981, c. 941, s. 2; Wilkes: 1989 (Reg. Sess., 1990), c. 1061, s. 2; Town of Chapel Hill: 2004-119, s. 2.

§ 153A-15.1. Agreement to make payment in lieu of future ad valorem taxes required before wetlands acquisition by a unit of local government.

(a) Condemnation. — Notwithstanding the provisions of G.S. 153A-15, Chapter 40A of the General Statutes, or any other general law or local act conferring the power of eminent domain, before a final judgment may be entered or a final condemnation resolution adopted in an action of condemnation initiated by a unit of local government whose property is exempt from tax under Section 2(3) of Article V of the North Carolina Constitution, whereby the condemnor seeks to acquire land for the purpose of wetlands mitigation, the condemnor shall agree in writing to pay to the county where the land is located a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the condemnor.

(b) Purchase. — Notwithstanding the provisions of G.S. 130A-55, 153A-15, 153A-158, 160A-240.1, or any other general law or local act conferring the power to acquire real property, before any unit of local government whose property is exempt from tax under Section 2(3) of Article V of the North Carolina Constitution purchases any land for the purpose of wetlands mitigation, the unit shall agree in writing to pay to the county where the land is located a sum equal to the estimated amount of ad valorem taxes that would have accrued to the county for the next 20 years had the land not been acquired by the acquiring unit.

(c) Definition. — For purposes of this section, the "estimated amount of ad valorem taxes that would have accrued for the next 20 years" means the total assessed value of the acquired land excluded from the county's tax base multiplied by the tax rate set by the county board of commissioners in its most recent budget ordinance adopted under Chapter 159 of the General Statutes, and then multiplied by 20.

(d) Exception. — This section does not apply to any condemnation or acquisition of land by a city or special district if the land to be condemned or acquired is within the corporate limits of that city or special district or within the county where the city or special district is located.

(e) Application. — This section applies only to land acquired in counties designated as an enterprise tier one or enterprise tier two area under G.S. 105-129.3. (2004-188, s. 1.)

Editor's Note. — Session Laws 2004-188, s. 7, made this section effective August 17, 2004, and applicable to transfers made on or after that date.

ARTICLE 5.

Administration.

Part 2. Administration in Counties Having Managers.

§ 153A-82. Powers and duties of manager.

CASE NOTES

Authority to Order Payment of Insurance Premiums for Disability Retiree. — In an action by a retired police officer seeking continuation of insurance payments by the county, individual county commissioners did not have authority to bind the county to such payments pursuant to G.S. 153A-92 or G.S. 153A-11, and a county manager did not did not have authority pursuant to G.S. 153A-82 to bind the county to an agreement to pay the insurance premiums without an express delegation of power by the Board of County Commissioners. Denson v. Richmond County, 159 N.C. App. 408, 583 S.E.2d 318, 2003 N.C. App. LEXIS 1498 (2003).

Part 4. Personnel.

§ 153A-92. Compensation.

CASE NOTES

Authority to Order Payment of Insurance Premiums for Disability Retiree. — In an action by a retired police officer seeking continuation of insurance payments by the county, individual county commissioners did not have authority to bind the county to such payments pursuant to G.S. 153A-92 or G.S. 153A-11, and a county manager did not did not have authority pursuant to G.S. 153A-82 to bind the county to an agreement to pay the insurance premiums without an express delegation of power by the Board of County Commissioners. Denson v. Richmond County, 159 N.C. App. 408, 583 S.E.2d 318, 2003 N.C. App. LEXIS 1498 (2003).

§ 153A-98. Privacy of employee personnel records.

CASE NOTES

Cited in Jones v. Bryant, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 8006 (M.D.N.C. May 4, 2004).

§ 153A-99. County employee political activity.

CASE NOTES

Summary Judgment Granted in Retaliatory Discharge Case. — In the former deputy sheriff's retaliatory discharge in violation of G.S. 153A-99 cause of action against the sheriff and the surety, the sheriff and surety were entitled to summary judgment pursuant to G.S. 1A-1, N.C. R. Civ. P. 56; the former deputy's assertion that the former deputy was fired due to the former deputy's affiliation with the sheriff's primary election foe was insufficient to establish a nexus between the protected activity and the discharge, because the evidence of the nexus was from the former deputy's deposition testimony that amounted to mere conjecture. Venable v. Vernon, 162 N.C. App. 702, 592 S.E.2d 256, 2004 N.C. App. LEXIS 250 (2004).

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

CASE NOTES

Notice Required for Ordinance Regulating Issuance of Building Permits. — Where the county argued that it did not have to issue notice in compliance with G.S. 153A-323 because the ordinance, imposing a moratorium on the issuance of building permits for the construction or operation of heavy industry, was enacted pursuant to the county's police power under G.S. 153A-121, the claim failed; the county adopted an ordinance that imposed a moratorium on the issuance of building permits, which was governed by G.S. 153A-323, and which was, therefore, not governed by G.S. 153A-121. Sandy Mush Props. v. Rutherford County, 160 N.C. App. 683, 586 S.E.2d 849, 2003 N.C. App. LEXIS 1934 (2003).

Trial court erred in granting a county's summary judgment motion and in denying a property owner's summary judgment motion where: (1) an ordinance prohibiting heavy industry was enacted after the county was enjoined from enforcing a moratorium on the issuance of building permits in the same area, (2) the moratorium was covered by N.C. Gen. Stat. ch. 153A, art. 18 as it dealt with the issuance of building permits, (3) the county could not avoid the notice requirements G.S. 153A-323, by stating that the moratorium was enacted pursuant to the police powers under G.S. 153A-121, and (4) although the county complied with the notice requirements before enacting the ordinance, the county had already been ordered to issue the building permit. Sandy Mush Props. v. Rutherford County, — N.C. App. —, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

Cited in Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003).

§ 153A-136. Regulation of solid wastes.

CASE NOTES

Consideration of Alternative Sites. — Motion to dismiss plaintiffs' Fourteenth Amendment and Title VI of the Civil Rights Act of 1964's intentional discrimination claims with regard to placement of a landfill was denied only to the extent that they were based on an alleged failure to follow G.S. 153A-136(c) because the court had previously ruled that if the county's alleged violation of G.S. 153A-136(c) was no longer relevant, then it would no longer be used as proof of the county's wrongdoing by plaintiffs. Franks v. Ross, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 21929 (E.D.N.C. Nov. 21, 2003).

§ 153A-143. Regulation of outdoor advertising.

(a) As used in this section, the term "off-premises outdoor advertising" includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A county may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the county in accordance with the applicable provisions of this Chapter.

(c) A county shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(d) No county may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to

the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

(1) The county and the owner of the nonconforming off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.

(2) The county and the owner of the nonconforming off-premises outdoor advertising enter into an agreement pursuant to subsection (k) of this section.

(3) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace.

(4) The removal is required for establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 153A-274, and the county allows the off-premises outdoor advertising to be relocated to a comparable location.

(5) The off-premises outdoor advertising is subject to removal pursuant to statutes, ordinances or regulations generally applicable to the demolition or removal of damaged structures.

(e) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal. Monetary compensation shall be determined based on:

(1) The factors listed in G.S. 105-317.1(a); and

(2) The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(f) If the parties are unable to reach an agreement on monetary compensation to be paid by the county to the owner of the nonconforming off-premises outdoor advertising sign for its removal, and the county elects to proceed with the removal, the county may bring an action in superior court for a determination of the monetary compensation to be paid. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the county shall own the sign.

(g) In lieu of paying monetary compensation, a county may enter into an agreement with the owner of a nonconforming off-premises outdoor advertising sign to relocate and reconstruct the sign. The agreement shall include the following:

(1) Provision for relocation of the sign to a site reasonably comparable to or better than the existing location. In determining whether a location is comparable or better, the following factors shall be taken into consideration:

a. The size and format of the sign.

b. The characteristics of the proposed relocation site, including visibility, traffic count, area demographics, zoning, and any uncompensated differential in the sign owner's cost to lease the replacement site.

c. The timing of the relocation.

(2) Provision for payment by the county of the reasonable costs of relocating and reconstructing the sign including:

a. The actual cost of removing the sign.

b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the sign.

c. The actual cost of installing the sign at the new location.

d. An amount of money equivalent to the income received from the lease of the sign for a period of up to 30 days if income is lost during the relocation of the sign.

(h) For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, a county, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it deems appropriate.

(i) If a county has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, and within 120 days after the initial notice by the county the parties have not been able to agree that the site or sites offered by the county for relocation of the sign are reasonably comparable or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.

(j) If the arbitration results in a determination that the site or sites offered by the county for relocation of the nonconforming sign are not reasonably comparable to or better than the existing site, and the county elects to proceed with the removal of the sign, the parties shall determine the monetary compensation under subsection (e) of this section to be paid to the owner of the sign. If the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination, and the county elects to proceed with the removal of the sign, then the county may bring an action in superior court for a determination of the monetary compensation to be paid by the county to the owner for the removal of the sign. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the county shall own the sign.

(k) Notwithstanding the provisions of this section, a county and an off-premises outdoor advertising sign owner may enter into a voluntary agreement allowing for the removal of the sign after a set period of time in lieu of monetary compensation. A county may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(*l*) A county has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(m) This section does not apply to any ordinance in effect on the effective date of this section. A county may repeal or amend an ordinance in effect on the effective date of this section so long as an amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section.

(n) The provisions of this section shall not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter 40A or Chapter 136 of the General Statutes.

(o) Nothing in this section shall limit a county's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising. (2004-152, s. 1.)

Editor's Note. — Session Laws 2004-152, s. 4, made this section effective August 2, 2004.

ARTICLE 7.

Taxation.

§ 153A-155. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie,

Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County. (1997-102, s. 3; 1997-255, s. 2; 1997-342, s. 2; 1997-364, s. 3; 1997-410, s. 6; 1998-14, s. 2; 1999-155, s. 2; 1999-205, s. 2; 1999-286, s. 2; 2000-103, s. 5; 2001-162, s. 2; 2001-305, s. 2; 2001-321, s. 3; 2001-381, s. 10; 2001-434, s. 1; 2001-439, s. 18.2; 2001-468, s. 3; 2001-480, s. 14; 2001-484, s. 2; 2002-138, s. 5; 2004-106, s. 2; 2004-120, s. 3; 2004-170, ss. 36(a), 42(a); 2004-199, s. 60(a).)

Effect of Amendments. —

Session Laws 2004-106, s. 2, effective July 16, 2004, inserted "Alleghany" in the list of counties in subsection (g).

Session Laws 2004-120, s. 3, effective July 17, 2004, inserted "Camden" in the list of counties in subsection (g).

Session Laws 2004-170, s. 36.(a), effective October 1, 2004, substituted "20th" for "15th" in subsection (d).

Session Laws 2004-170, s. 42.(a), as amended by Session Laws 2004-199, s. 60(a), effective July 1, 2004, and applicable to taxes that accrue on or after that date, added subsection (f1).

Article 8.

County Property.

Part 2. Use of County Property.

§ 153A-169. Care and use of county property; sites of county buildings.

CASE NOTES

Duties Involving Construction of Public Building Inherent in Office of County Commissioner. —

In taxpayer suit against county commissioners for entering into a contract that benefitted one of the commissioners, the actions of the commissioners who were not benefitted, regarding expending funds for the renovation of the county courthouse and county health department, were consistent with the course and scope of their office. Gibbs v. Mayo, 162 N.C. App. 549, 591 S.E.2d 905, 2004 N.C. App. LEXIS 252 (2004), cert. denied, — N.C. —, 599 S.E.2d 45 (2004).

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-225. Medical care of prisoners.

(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than ten dollars ($10.00) per incident for the provision of nonemergency medical care to prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Health and Human Services. The report shall be made on forms developed and distributed by the Department of Health and Human Services.

(b1) Whenever a local confinement facility transfers a prisoner from that facility to another local confinement facility, the transferring facility shall provide the receiving facility with any health information or medical records the transferring facility has in its possession pertaining to the transferred prisoner.

(c) If a person violates any provision of this section (including the requirements regarding G.S. 130-97 and 130-121), he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3; 1989, c. 727, s. 204; 1991, c. 237, s. 2; 1993, c. 539, s. 1062; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 385, s. 1; 1997-443, s. 11A.112; 2003-392, s. 1; 2004-199, s. 46(a).)

Effect of Amendments. — Session Laws 2003-392, s. 1, as amended by Session Laws 2004-199, s. 46(a), effective August 7, 2003, added subsection (b1).

Article 16.

County Service Districts; County Research and Production Service Districts; County Economic Development and Training Districts.

Part 1. County Service Districts.

§ 153A-300. Title; effective date.

Editor's Note. —

Session Laws 2004-170, s. 37, effective August 2, 2004, rewrote Article 16 of Chapter 153A of the General Statutes which read: "County Service Districts; County Research and Production Service Districts."

Part 3. Economic Development and Training Districts.

§ 153A-317.11. Purpose and nature of districts.

The board of commissioners of any county may define acounty economic development and training district, as providedin this Part, to finance, provide, and maintain for the districta skills training center in cooperation with its communitycollege branch in or for the county to prepare residents of thecounty to perform manufacturing, research and development, andrelated service and support jobs in the pharmaceutical, biotech, life sciences, chemical, telecommunications, and electronics industries, and allied, ancillary, and subordinate industries,to provide within the district any of the education, training, and related services, facilities, or functions that a county or a city is authorized by general law to provide, finance, or maintain, and to promote economic development in the county. The skills training center and related services shall be financed, provided, or maintained in the district either in addition to or to a greater extent than training facilities and services are financed, provided, or maintained in the entire county. A district created under this Part is a special tax area under Section 2(4) of Article V of the North Carolina Constitution. (2003-418, s. 1; 2004-170, s. 38.)

Effect of Amendments. — Session Laws 2004-170, s. 38, effective August 2, 2004, rewrote the section heading; and added the last sentence.

§ 153A-317.17. Taxes authorized; rate limitation.

A county may levy property taxes within an economic development and training district, in addition to those levied throughout the county, for the purposes listed in G.S. 153A-317.11 within the district in addition to or to a greater extent than the same purposes provided for the entire county. In addition, a county may allocate to a district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes within a district may be expended only to pay annual debt service on up to one million two hundred thousand dollars ($1,200,000) of the capital costs of a skills training center provided for the district and any other services or facilities provided by a county in response to a recommendation of an advisory committee.

Property subject to taxation in a newly established district or in an area annexed to an existing district is subject to taxation by the county as of the preceding January 1.

Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of eight cents (8¢) on each one hundred dollars ($100.00) value of property subject to taxation. (2003-418, s. 1; 2004-170, s. 39.)

Effect of Amendments. — Session Laws 2004-170, s. 39, effective August 2, 2004, in the first paragraph, substituted "for the purposes listed in G.S. 153A-317.11 within the district" for "in order to finance, provide, or maintain for the district a skills training center provided therein," and substituted "the same purposes" for "worker training facilities."

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

Editor's Note. —

Session Laws 2004-161, ss. 4.1 to 4.5, provide: "SECTION 4.1. There is created the Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas. The Commission shall consist of 17 members as follows:

"(1) Two county commissioners appointed by the President Pro Tempore of the Senate.

"(2) Two county commissioners appointed by the Speaker of the House of Representatives.

"(3) The commanding generals of Fort Bragg, Pope Air Force Base, Seymour Johnson Air Force Base, Camp Lejeune, and Cherry Point Air Station, or the general's designee.

"(4) Three Senators appointed by the President Pro Tempore of the Senate.

"(5) Three Representatives appointed by the Speaker of the House of Representatives.

"(6) One elected or appointed municipal official appointed by the President Pro Tempore of the Senate.

"(7) One elected or appointed municipal official appointed by the Speaker of the House of Representatives.

"The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

"SECTION 4.2. The Commission shall study the following concerning residential and urban development encroachment on military bases and training areas:

"(1) Restricting the zoning in the areas around military bases and training areas.

"(2) How encroachment affects deed registration.

"(3) Protecting the areas around military bases and training areas by purchasing development rights and buffers using all available State trust funds and other available funding mechanisms.

"(4) Any other issue the Commission considers relevant.

"SECTION 4.3. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

"Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S.120-3.1, 138-5, or 138-6, as appropriate.

"SECTION 4.4. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2005 General Assembly upon its convening. The Commission shall terminate upon the convening ofthe 2005 General Assembly.

"SECTION 4.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part."

§ 153A-321. Planning boards.

A county may by ordinance create or designate one or more boards or commissions to perform the following duties:

(1) Make studies of the county and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

A board or commission created or designated pursuant to this section may include but shall not be limited to one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6; 1997-309, s. 5; 2004-199, s. 41(c).)

Effect of Amendments. — Session Laws 2004-199, s. 41(c), effective October 1, 2004, substituted "boards" for "agency" in the section heading; substituted "boards or commissions" for "agencies" in the first undesignated paragraph and substituted "A board or commission" for "An agency" in the second undesignated paragraph.

§ 153A-322. Supplemental powers.

A county or its designated planning board may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning board under which it agrees to pay the other local government or planning board for technical planning assistance.

A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support, and compensate members of, any planning agency that it may create or designate pursuant to this Article. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1983, c. 377, s. 8; 2004-199, s. 41(d).)

Effect of Amendments. — Session Laws 2004-199, s. 41(d), effective October 1, 2004, substituted "board" for "agency" throughout.

§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

(a) Before adopting or amending any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance. (1959, c. 1006, s. 1; c. 1007; 1973, c. 822, s. 1; 1981, c. 891, ss. 2, 9; 2004-75, s. 1.)

Effect of Amendments. — Session Laws 2004-75, s. 1, effective July 1, 2004, added subsection (b).

CASE NOTES

Notice Requirements Could Not Be Avoided by Citing to Police Powers. — Trial court erred in granting a county's summary judgment motion and in denying a property owner's summary judgment motion where: (1) an ordinance prohibiting heavy industry was enacted after the county was enjoined from enforcing a moratorium on the issuance of building permits in the same area, (2) the moratorium was covered by N.C. Gen. Stat. ch. 153A, art. 18 as it dealt with the issuance of building permits, (3) the county could not avoid the notice requirements G.S. 153A-323, by stating that the moratorium was enacted pursuant to the police powers under G.S. 153A-121, and (4) although the county complied with the notice requirements before enacting the ordinance, the county had already been ordered to issue the building permit. Sandy Mush Props. v. Rutherford County, — N.C. App. —, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

Failure to Comply with Notice Requirements. —

A county ordinance that imposed a moratorium on the issuance of building permits dealing with the construction of heavy industry was invalid, because notice was not given once a week for two successive weeks before the public hearing on the ordinance was held as was required under G.S. 153A-323, and instead notice was only published once. Sandy Mush Props. v. Rutherford County, 160 N.C. App. 683, 586 S.E.2d 849, 2003 N.C. App. LEXIS 1934 (2003).

County's claim that it did not have to issue notice in compliance with G.S. 153A-323 because the ordinance, imposing a moratorium on the issuance of building permits for the construction or operation of heavy industry, was enacted pursuant to the county's police power under G.S. 153A-121, failed. Sandy Mush Props. v. Rutherford County, 160 N.C. App. 683, 586 S.E.2d 849, 2003 N.C. App. LEXIS 1934 (2003).

Cited in Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation.

CASE NOTES

Cited in Jones v. Davis, — N.C. App. —, 594 S.E.2d 235, 2004 N.C. App. LEXIS 577 (2004).

§ 153A-335. "Subdivision" defined.

Local Modification. — Cherokee: 1977, c. 253; Chowan: 2002-141, s. 8 (applicable to all subdivisions created on or after June 16, 1992); 2003-79, s. 1; Davie: 1995, c. 78, s. 1; Henderson: 1989 (Reg. Sess., 1990), c. 863, s. 1; Jones: 1999-125, s. 1; Montgomery: 1995, c. 337, s. 1; Onslow: 1975, c. 105; Pasquotank: 1993, c. 194, s. 1; Person: 1987 (Reg. Sess., 1988), c. 932, s. 2; Pitt: 2004-46; Richmond: 2000-11; 2001-189, s. 1; Robeson: 1987, c. 535, s. 2; Scotland: 1983, c. 96; Stanly: 1987 (Reg. Sess., 1988), c. 930; 1991, c. 504; 1993 (Reg. Sess., 1994), c. 574; 1998-37; 1998-217, s. 7; Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 1. Session Laws 1997-246 and Session Laws 2001-50, which provided for a local modification to this section applicable to Hartnett County, are repealed by Session Laws 2004-46, s. 1, effective January 1, 2005.

Part 3. Zoning.

§ 153A-341. Purposes in view.

CASE NOTES

Cited in Sandy Mush Props. v. Rutherford County, — N.C. App. —, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

§ 153A-342. Districts; zoning less than entire jurisdiction.

Editor's Note. — "(7) One elected or appointed municipal official appointed by the Speaker of the House of Representatives.

"(2) How encroachment affects deed registration.

CASE NOTES

Cited in Sandy Mush Props. v. Rutherford County, — N.C. App. —, 595 S.E.2d 233, 2004 N.C. App. LEXIS 743 (2004).

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Waiver of Immunity by Nonprofit Fire Company. —

If a rural fire department was a "fire protection district fire department" subject to the requirements of G.S. 69-25.8 and G.S. 153A-435, the specific and limited immunity provided by G.S. 58-82-5 still applied to an action against the department and one of its firemen for personal injuries received from one of the department's vehicles when the department and the fireman were in the process of responding to and suppressing a fire. Luhmann v. Hoenig, 161 N.C. App. 452, 588 S.E.2d 550, 2003 N.C. App. LEXIS 2187 (2003).

Waiver of Immunity by County. —

County waived sovereign immunity to the extent that an insurance policy it purchased covered negligent acts committed by emergency medical technicians (EMTs) who worked for the county, and the trial court erred by dismissing a lawsuit which claimed that a person died because EMTs employed by the county were negligent. Dawes v. Nash County, 357 N.C. 442, 584 S.E.2d 760, 2003 N.C. LEXIS 829 (2003).

Immunity Not Waived as to Employees and Premises Not Included in Policy. —

Insurance policy purchased by Chatham County, North Carolina did not allow law enforcement employees to recover damages from the County, and because the County had not waived immunity from suit by law enforcement employees, the trial court properly ruled that a school resource officer (SRO) who worked for a sheriff's department could not sue the sheriff or a chief deputy sheriff in their official capacities. However, the SRO engaged in a protected activity when he cooperated with federal agents who were investigating the sheriff, and the trial court erred when it dismissed a claim for wrongful discharge which the SRO filed against the sheriff in his individual capacity. Phillips v. Gray, — N.C. App. —, 592 S.E.2d 229, 2004 N.C. App. LEXIS 248 (2004).

Immunity Not Waived By University. — University's motion to dismiss an employee's state law claims against it pursuant to Fed. R. Civ. P. 12(b)(1) was granted because the university, as a state agency, enjoyed the protection of Eleventh Amendment immunity from liabilities that had to be paid from public funds; therefore, because North Carolina had not explicitly waived immunity from state court proceedings with regard to torts by state employees under G.S. 143-291, the university did not waive its immunity through removal to federal court, nor did the university waive its immunity under G.S. 153A-435(a) by purchasing liability insurance since there was not a plain and unmistakable mandate from the General Assembly to waive immunity in these circumstances. Alston v. N.C. A&T State Univ., 304 F. Supp. 2d 774, 2004 U.S. Dist. LEXIS 1725 (M.D.N.C. 2004).

Failure to Plead Waiver of Immunity. — Lienholder that sought damages from a county, based on its claim that the county was liable for negligent acts committed by its tax collector, did not state a valid claim for recovery because it failed to allege that the county had waived governmental immunity. Oakwood Acceptance Corp., LLC v. Massengill, 162 N.C. App. 199, 590 S.E.2d 412, 2004 N.C. App. LEXIS 118 (2004).

§ 153A-442. Animal shelters.

A county may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. The animal shelters shall meet the same standards as animal shelters regulated by the Department of Agriculture pursuant to its authority under Chapter 19A of the General Statutes. (1973, c. 822, s. 1; 2004-199, s. 39(a).)

Effect of Amendments. — Session Laws 2004-199, s. 39(a), effective August 17, 2004, added the last sentence.

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Sec.
157-9. Powers of authority.

Article 1.

Housing Authorities Law.

§ 157-9. Powers of authority.

(a) An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance by such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to

provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this Article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or

may acquire the capital stock of any corporation or corporations. Any corporate agent, (i) all of the stock of which shall be owned by the authority or its nominee or nominees or (ii) the board of directors of which shall be elected or appointed by the authority or is composed of the commissioners of the authority or (iii) which is otherwise subject to the control of the authority or the governmental entity which created the authority, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this Article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(b) Notwithstanding anything to the contrary contained in this Article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(c) To the extent not inconsistent with the Constitution or statutes of this State or the United States, an authority may adopt and enforce rules governing the lawful entry of guests and visitors to its properties, including the visitors and guests of its tenants. Prior to adopting such rules, an authority shall make reasonable efforts to consult with or obtain comments from its tenants or their representatives. Persons who enter or remain on the property of an authority in violation of such rules shall be subject to prosecution as applicable under G.S. 14-159.12 or G.S. 14-159.13.

(d) A housing authority shall not erect or maintain around any lawfully occupied housing units any fence or gate structure that is electrified or that includes spikes or barbed wire. (1935, c. 456, s. 9; 1939, c. 150; 1977, c. 784, s. 1; 1979, c. 690, s. 1; c. 805; 1995, c. 520, s. 2; 2004-199, s. 40.)

Effect of Amendments. — Session Laws 2004-199, s. 40, effective August 17, 2004, added subsection (d).

Chapter 158.

Local Development.

Article 2.

Economic Development Commissions.

§ 158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

Editor's Note. —
Laws 2004-124, s. 13.6(c), repealed Session Laws 2002-126, s. 8.3, effective July 1, 2004.

Chapter 159.

Local Government Finance.

SUBCHAPTER IV. LONG-TERM FINANCING.

Sec.
159-100. Authorization.

Article 5A.

Capital Appreciation Bonds.

Sec.
159-99. Definition; terms and conditions.

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 5A.

Capital Appreciation Bonds.

§ 159-99. Definition; terms and conditions.

(a) Capital Appreciation Bond Defined. — For purposes of this Article, the term "capital appreciation bond" means a bond that meets all of the following conditions:

(1) It is sold, at public or private sale, at a price substantially less, as conclusively determined by the issuer of the bond, than the principal amount of the bond.

(2) Compounded interest on the bond is payable at maturity.

(3) The bond is designated as a capital appreciation bond within the meaning of this Article by the proceedings of the issuer of thebond providing for its issuance.

(b) Calculating Principal Amount. — For purposes of calculating the aggregate principal amount of bonds within the meaning of any constitutional or statutory limitation on the incurrence of debt, the aggregate principal amount of any capital appreciation bonds is the aggregate of the initial offering prices at which the bonds are offered for sale to the public, including private or negotiated sales, or sold to the initial purchaser of the bonds in a private placement, in either case without reduction to reflect underwriters' discount or placement agents' or other intermediaries' fees.

(c) Terms and Conditions. — The proceedings providing for the issuance of any capital appreciation bonds may provide for the issuance of terms bonds or serial bonds, or both, the establishment of sinking funds for or the redemption of term bonds, the issuance of capital appreciation bonds at the same time and as part of the same issue of any other type of bonds, the method of calculating the principal amount of any such capital appreciation bonds outstanding for the purpose of determining, within the meaning of the proceedings and otherwise, application of debt service provisions, funds into which debt service payments are to be deposited, application of redemption provisions, bondowners' voting rights and consents, pro rata application of available funds, and any other matters the issuer considers appropriate. (1987, c. 650; 2004-170, ss. 40(a), 40(c).)

Editor's Note. — Session Laws 2004-170, s. 40(a), codified Session Laws 1987-650, s. 6, as the first two paragraphs of G.S. 159-99.

Effect of Amendments. — Session Laws 2004-170, s. 40.(c), effective August 2, 2004, rewrote the section heading; added subsection

and subdivision designations; added subheadings; in subsection (a), substituted "Article" for "act," substituted "'bond' means a bond that meets all of the following conditions:" for "'bonds' means any bond or bonds"; in subdivision (a)(1), added "It is" at the beginning, substituted "of the bond" for "thereof," and substituted "of the bond" for "thereof and compounded"; in subdivision (a)(2), added "Compounded" preceding "interest," substituted "on the bond" for "thereon," and deleted ", but only if such bond or bonds are" at the end; in subdivision (a)(3), added "The bond is" at the beginning, inserted "a" preceding "capital," substituted "bond" for "bonds," substituted "Article" for "act," substituted "of the bond providing for its issuance" for "thereof providing for the issuance of such bonds"; in subsection (b), substituted "is" for "shall be," substituted "the" for "such," substituted "of the bonds" for "thereof"; in subsection (c), substituted "capital appreciation" for "such," substituted "the" for "such," substituted ", and any other matters the issuer considers appropriate" for "and such other matters as may be deemed appropriate by the issuer"; and deleted the paragraph following subsection (c).

§ 159-100. Authorization.

(a) Revenue Bond Act. — The State and local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act.

(b) Local Government Bond Act. — Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The Local Government Bond Act. In connection with the issuance of a series of bonds containing capital appreciation bonds issued by local governmental units pursuant to The Local Government Bond Act, the Local Government Commission may require that annual debt service on the series of bonds be as nearly level or equal as possible taking into consideration prevailing financial techniques, including, without limitation, the postponement of principal maturities in early years of the issue and the use of capitalized interest. The Local Government Commission may also limit the amount of a series of bonds that may be issued as capital appreciation bonds and to make the issuance of any capital appreciation bonds subject to a finding by the Commission or the issuer that the issuance of the bonds will not increase the aggregate amount of debt service payable on the series of bonds of which the capital appreciation bonds constitute a part.

(c) Future Acts. — Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of any law enacted in the future. (1987, c. 650; 2004-170, ss. 40(b), 40(c).)

Editor's Note. — Session Laws 2004-170, s. 40(b), codified Session Laws 1987-650, ss. 7 and 5, as the second and third paragraphs, respectively, of G.S. 159-100.

Effect of Amendments. — Session Laws 2004-170, s. 40.(c), effective August 2, 2004, rewrote the section headings; added subsection designations; added subheadings; rewrote subsections (a) and (c); in subsection (b), inserted the first sentence, in the second sentence, substituted "may" for "is hereby authorized to," substituted "the" for "such," in the last sentence, substituted "may also" for "is hereby further authorized to," deleted "such" preceding "capital," and substituted "the" for "such" throughout.

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

Sec.

159C-7. Approval of industrial projects and pollution control projects by Secretary of Commerce.

§ 159C-7. Approval of industrial projects and pollution control projects by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by an authority to finance an industrial project or a pollution control project unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed industrial project or pollution control project with the Secretary of Commerce, and shall notify the Local Government Commission of the filing.

(b) Findings. — The Secretary shall not approve any proposed industrial project or pollution control project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project, that the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that the project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In the case of an industrial project or a pollution control project, except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate the project, and

c. That the financing of the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(b1) Initial Operator. — If the initial proposed operator of an industrial project or a pollution control project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. — The Secretary of Commerce shall not approve any proposed industrial project or pollution control project pursuant to this section

unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed industrial project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed industrial project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. — To facilitate review of each proposed industrial project or pollution control project, the Secretary may require the authority to obtain and submit any data and information about the project the Secretary may prescribe. The Secretary may also prescribe forms and rules the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. — If the Secretary approves the proposed industrial project or pollution control project, the Secretary shall prepare a certificate of approval evidencing the approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county. This approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes only by an action filed, within 30 days after notice of the findings and approval have been so published, in the Superior Court of Wake County. The superior court is vested

with jurisdiction to hear the action, but if no action is filed within the 30 days prescribed, the validity of the approval is conclusively presumed, and no court has authority to inquire into the approval. Copies of the certificate of approval of the proposed industrial project or pollution control project will be given to the authority, the board of county commissioners, and the Secretary of the Local Government Commission.

The certificate of approval becomes effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate expires one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed industrial project or pollution control project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the industrial project or pollution control project, however, the certificate expires three years after the date of the first issuance of the bonds. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c. 704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29); 1991 (Reg. Sess., 1992), c. 959, s. 79; 1995 (Reg. Sess., 1996), c. 575, s. 6; 1997-443, s. 11A.123; 1997-463, s. 2; 2000-179, s. 6; 2004-132, s. 1.)

Editor's Note. — Session Laws 2004-132, s. 3, provides: "The Department of Commerce shall encourage projects applying for industrial revenue bonds under Chapter 159C or Chapter 159D of the General Statutes to locate the projects in development zones."

Effect of Amendments. — Session Laws 2004-132, s. 1, effective July 29, 2004, rewrote subdivision (b)(1).

Chapter 159D.

The North Carolina Capital Facilities Financing Act.

Article 1.

Industrial And Pollution Control Facilities Financing.

Sec.
159D-7. Approval of project by Secretary of Commerce.

Article 3.

Life Sciences Revenue Bond Authority.

159D-65. Legislative findings.
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Article 1.

Industrial And Pollution Control Facilities Financing.

§ 159D-7. Approval of project by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by the agency pursuant to this Article unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The agency shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. — The Secretary shall not approve any proposed project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project, that the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project),

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the agency will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(c) Initial Operator. — If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(d) Public Hearing, Generally. — The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d1) Public Hearing, Multiple Projects. — Notwithstanding subsection (d) of this section, in the event the bonds proposed to be issued are to finance more than one project, the public hearing shall be conducted by the agency or by a hearing officer designated by the agency to conduct public hearings. The public hearing may be held at any location designated by the agency. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in each county in which a proposed project is to be located not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and any proposed project in that county, including its general location, and any other information the agency considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. A copy of the notice of public hearing must be mailed to the board of county commissioners of any county in which a proposed project is to be located and to the governing body of any municipality in which a proposed project is to be located.

(e) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary shall not make the findings required by subdivision (b)(2a) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the agency consents to a longer period of time.

(f) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project, except that

prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed project if the Secretary has received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(g) Rules. — To facilitate the Secretary's review of each proposed project, the Secretary may require the agency to obtain and submit such data and information about such project as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules as the Secretary considers reasonably necessary to implement the provisions of this section.

(h) Certificate of Approval. — If the Secretary approves the proposed project, the Secretary shall prepare a certificate of approval evidencing such approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the agency, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

The certificate of approval shall become effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate shall expire one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Article or Chapter 159C of the General Statutes to pay all or part of the costs of the project, however, the certificate expires three years after the date of the first issuance of the bonds.

(i) Certificate Issued Under Chapter 159C Effective. — Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 satisfies the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant to this section. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30); 1991 (Reg. Sess., 1992), c. 959, s. 82; 1997-443, s. 11A.123; 2000-179, s. 2; 2002-172, s. 5.2; 2003-416, s. 2; 2004-132, s. 2.)

Editor's Note. —

Session Laws 2004-132, s. 3, provides: "The Department of Commerce shall encourage projects applying for industrial revenue bonds under Chapter 159C or Chapter 159D of the General Statutes to locate the projects in development zones."

Effect of Amendments. —

Session Laws 2004-132, s. 2, effective July 29, 2004, rewrote subdivision (b)(1).

ARTICLE 3.

Life Sciences Revenue Bond Authority.

§ 159D-65. Legislative findings.

The General Assembly finds the following:

(1) The life sciences, including biology, zoology, agronomy, biochemistry, genetics, and molecular biology, have developed and are continuing to develop new commercially viable products designed to diagnose and treat diseases, produce therapeutic proteins and industrial enzymes, synthesize nutritional supplements and specialty chemicals in microorganisms, plants, and animals, and accomplish other beneficial purposes.

(2) The commercialization of life science products has provided, and will continue to provide, significant economic benefits for the citizens of North Carolina through increased business development and employment.

(3) North Carolina has a strong life sciences infrastructure in place, fostered over many years by the General Assembly, public and private universities, the North Carolina Biotechnology Center, life sciences companies and investors, and various State, regional, and local economic development initiatives.

(4) Nationally and within North Carolina, the life sciences industry has an immediate need for additional manufacturing capacity for the extraction, separation, purification, and packaging of products at various stages of the development, testing, and commercialization process, and the demand for this manufacturing capacity is likely to increase significantly in the next three to five years.

(5) Employment opportunities created by life sciences manufacturing facilities are ideally suited for rural and urban regions of North Carolina currently undergoing significant economic challenges, and ancillary employment opportunities in construction, logistical support, transportation, raw material supply, and other fields will be enhanced through the construction and operation of life sciences manufacturing facilities in the State.

(6) A Life Sciences Revenue Bond Authority to help finance bioprocessing development facilities and bioprocessing manufacturing facilities addresses a critical need for companies that are formulating products, conducting field and clinical trials, and engaging in the production of new products.

(7) It is in the interest of the people of North Carolina that the State take steps to encourage the development of these facilities in the State and that the State seek to achieve a position of national leadership and innovation in the field of bioprocess manufacturing by facilitating the construction of economically sound and sustainable facilities in the State. (2003-435, 2nd Ex. Sess., s. 7.1.)

Editor's Note. — Session Laws 2003-435, 2nd Ex. Sess., s. 7.4 made this Article effective December 16, 2003.

Session Laws 2003-435, 2nd Ex. Sess., s. 7.2, provides: "The Life Sciences Revenue Bond Authority created in this part [Part 7 of Session Laws 2003-435, 2nd Ex. Sess.] shall provide a written report to the General Assembly by May 1, 2004, setting forth its findings regarding the steps required to encourage and foster the expansion of the North Carolina life sciences manufacturing industry, including proposed legislation if considered appropriate by the Authority."

Session Laws 2003-435, 2nd Ex. Sess., s. 7.3, provides: "Nothing in this part [Part 7 of Ses-

sion Laws 2003-435, 2nd Ex. Sess.] requires the General Assembly to appropriate funds to implement it."

§ 159D-66. Definitions.

The following definitions apply in this Article:

(1) Authority. — The Life Sciences Revenue Bond Authority.

(2) Board. — The Board of Directors of the Authority. (2003-435, 2nd Ex. Sess., s. 7.1.)

Editor's Note. — Session Laws 2003-435, 2nd Ex. Sess., s. 7.4, made this Article effective December 16, 2003.

§ 159D-67. Creation and purposes of Life Sciences Revenue Bond Authority.

(a) Creation. — The Life Sciences Revenue Bond Authority is created within the Department of State Treasurer for organizational and budgetary purposes only. The Authority shall be governed by a Board of Directors. The Board of Directors is authorized to administer the Authority independently in accordance with the requirements of this Article.

(b) Purposes. — The Authority has the following purposes:

(1) To examine alternatives for enhancing North Carolina's construction financing infrastructure for life sciences manufacturing facilities by credit enhancement vehicles such as revenue bonds.

(2) To establish proposed guidelines for the deployment, oversight, promotion, monitoring, and management of these credit enhancement vehicles.

(3) To identify prospective life sciences enterprises that might benefit from the establishment of credit enhancement vehicles.

(4) To advise and make recommendations to the General Assembly regarding further legislation to achieve the goals of the Authority.

(5) To serve as the central life sciences revenue bond policy planning body in the State through collaboration and coordination with State, regional, local agencies, The University of North Carolina System, the North Carolina Biotechnology Center, the State Treasurer, and private entities in order to develop and foster a life sciences credit enhancement infrastructure for the benefit of the citizens of North Carolina. (2003-435, 2nd Ex. Sess., s. 7.1.)

Editor's Note. — Session Laws 2003-435, 2nd Ex. Sess., s. 7.4, made this Article effective December 16, 2003.

§ 159D-68. Board of Directors.

(a) Members. — The Board of Directors consists of seven voting members, as follows:

(1) Two members appointed by the Governor.

(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) The State Treasurer of North Carolina or the Treasurer's designee.

(b) Terms. — The initial terms of office begin on the date of appointment and expire on June 30, 2005. Board members appointed for subsequent terms shall serve terms of three years. Board members may serve up to two full consecutive three-year terms. All members of the Board shall remain in office until their successors are appointed and qualify.

(c) Vacancies. — A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of the term. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(d) Chair. — The members of the Board shall elect a Chair from among their members. The Chair shall serve in that position at the pleasure of the Board. (2003-435, 2nd Ex. Sess., s. 7.1.)

Editor's Note. — Session Laws 2003-435, 2nd Ex. Sess., s. 7.4, made this Article effective December 16, 2003.

§ 159D-69. Powers and duties of Authority.

(a) Powers. — The Authority has all of the powers necessary or convenient to carry out this Article, including the following powers:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties.

(2) To adopt and modify an official seal.

(3) To maintain an office at any place within the State as it may determine.

(4) To apply for, accept, and utilize grants, contributions, and appropriations in order to carry out its duties as provided in this Article.

(5) To employ, contract with, direct, and supervise all personnel and consultants and to enter into other contracts as necessary to accomplish the purposes of this Article, within the resources available to the Authority for that purpose.

(6) To review and recommend changes in laws, rules, programs, and policies of the State and its agencies and subdivisions to further the enhancement of the life sciences construction financing infrastructure within the State.

(b) Duties. — The Authority has the following duties:

(1) To establish an organizational structure and operational procedures to administer the Authority's programs.

(2) To examine various alternatives for encouraging the expansion of North Carolina's life sciences manufacturing industry by the use of credit enhancement vehicles such as revenue bonds and otherwise.

(3) To establish proposed guidelines for the deployment, oversight, promotion, monitoring, and management of these credit enhancement vehicles.

(4) To collaborate and coordinate with State, regional, and local agencies, The University of North Carolina System, the North Carolina Biotechnology Center, the State Treasurer, and private entities in order to develop and foster a life sciences credit enhancement infrastructure for the benefit of the citizens of North Carolina.

(5) To develop the detailed procedures that could be employed to identify and qualify applicants for credit enhancement programs, including procedures to evaluate the scientific, business, and financial qualifications of these applicants.

(6) To receive and process test or pro forma applications from potential applicants for credit enhancement programs to demonstrate the need for the programs and to assess and collect fees from the potential applicants to cover the costs of processing and reviewing the applications. (2003-435, 2nd Ex. Sess., s. 7.1.)

Editor's Note. — Session Laws 2003-435, 2nd Ex. Sess., s. 7.4, made this Article effective December 16, 2003.

Chapter 159G.
North Carolina Clean Water Revolving Loan and Grant Act of 1987.

Sec.
159G-3. Definitions.
159G-10. Priorities.

§ 159G-1. Short title.

Editor's Note. —

Session Laws 2004-124, s. 12.8(a) provides: "Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to six million nine hundred thousand dollars ($6,900,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2004-2005 fiscal year and to match the federal grant moneys authorized by Title VI of the federal Water Quality Act of 1987 for the 2004-2005 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 159G-3. Definitions.

As used in this Chapter, the following words shall have the meanings indicated, unless the context clearly requires otherwise:

(1) Repealed by Session Laws 1991, c. 186, s. 1.

(2) "Applicant" means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that local government unit. For purposes of the Drinking Water Treatment Revolving Loan Fund established by G.S. 159G-5(d), "applicant" also means a nonprofit water corporation that is incorporated in compliance with Chapter 55A of the General Statutes solely for the purpose of providing community water or community water and wastewater and that is eligible for a federal loan or a federal loan and grant from the Rural Utility Services Division, U.S. Department of Agriculture.

(2a) "Bond rating" means the numerical rating of a local government unit developed by the North Carolina Municipal Council, Inc., or any successor thereto. The rating formula is based on 100 being a theoretically "perfect" local government unit and is an assessment of the creditworthiness of the unit. Local government units with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.

(3) "Clean Water Revolving Loan and Grant Fund" means the fund established in the Department of Environment and Natural Resources to carry out the provisions of this Chapter, with various accounts therein as herein provided.

(4) "Construction costs" means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property.

(5) "Grant" means a sum of money given by the State to an applicant to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum.

(6) "Commission for Health Services" means the Commission for Health Services created by G.S. 130A-29.

(6a) "Debt instrument" means an instrument in the nature of a promissory note executed by an applicant under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms.

(7) "Division of Environmental Health" means the Division of Environmental Health of the Department of Environment and Natural Resources.

(7a) "Economically distressed local government unit" means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A.

(8) "Environmental Management Commission" means the Environmental Management Commission of the Department of Environment and Natural Resources.

(9) "Local Government Commission" means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(10) "Local government unit" means a county, city, town, incorporated village, consolidated city-county, as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, joint agency authorized by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that also provided water and wastewater services off the airport premises before January 1, 1995, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, or the Eastern Band of Cherokee Indians in North Carolina.

(11) Repealed by Session Laws 1991, c. 186, s. 1.

(12) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Water Quality with respect to receipt of applications for revolving loans and grants for wastewater systems.

(13) "Revolving construction loan" means a sum of money loaned by the State to an applicant to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of the applicant to repay such sum, the proceeds of such repayment to be deposited in the fund from which the loan was made.

(14) "Revolving emergency loan" means a sum of money loaned by the State to a local government unit upon a certification, as provided in this Chapter, of a serious public health hazard, with an obligation on the part of such unit to repay such sum.

(15) "Revolving loan" includes a revolving construction loan and an emergency loan.

(15a) "State" means the State of North Carolina.

(15b) "State Treasurer" means the Treasurer of the State elected pursuant to Article III, Section 7 of the Constitution or his designated representative.

(16) "Wastewater Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for wastewater treatment work and wastewater collection system projects.

(17) "Wastewater collection system" means a unified system of pipes, conduits, pumping stations, force mains, and appurtenances other than interceptor sewers, for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments or any other buildings, and owned by a local government unit.

(18) "Wastewater treatment works" means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, phosphorus removal equipment, pumping, power and other equipment and their appurtenances.

(19) "Water Supply Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for water supply system projects.

(20) "Water supply system" means a public water supply system consisting of facilities and works for supplying, treating and distributing potable water including, but not limited to, impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the system to other public water supply systems, pumping equipment and all other necessary appurtenances, equipment and structures. (1987, c. 796, s. 1; 1989, c. 727, s. 206; c. 770, s. 36; c. 799, s. 13; 1989 (Reg. Sess., 1990), c. 1004, s. 58; 1991, c. 186, s. 1; 1995, c. 461, s. 11; 1995 (Reg. Sess., 1996), c. 644, s. 4; c. 743, s. 23; 1997-443, s. 11A.123; 1997-458, s. 5.2; 1999-213, s. 2; 1999-329, s. 12.1; 2002-176, s. 5; 2004-195, s. 1.7.)

Effect of Amendments. — Session Laws 2004-195, s. 1.7, effective August 17, 2004, corrected the spelling of "phosphorus" in subdivision (18).

§ 159G-4. Appropriations.

Editor's Note. —

Session Laws 2004-124, s. 12.8(a), provides: "Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to six million nine hundred thousand dollars ($6,900,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2004-2005 fiscal year and to match the federal grant moneys authorized by Title VI of the federal Water Quality Act of 1987 for the 2004-2005 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 159G-5. Clean Water Revolving Loan and Grant Fund.

Editor's Note. —

Session Laws 2004-124, s. 12.8(a), provides: "Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to six million nine hundred thousand dollars ($6,900,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2004-2005 fiscal year and to match the federal grant moneys authorized by Title VI of the federal Water Quality Act of 1987 for the 2004-2005 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

§ 159G-10. Priorities.

(a) Determination. — Determination of priorities to be assigned each eligible application shall be made semiannually by each receiving agency during each fiscal year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1) shall be considered by the receiving agency with every other application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible for consideration during the same priority period, to determine the priority to be assigned to each application. The same procedure shall apply to every eligible application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which does not contain the information required by this Chapter or regulations adopted by the receiving agency(s) shall not be deemed received until such information is furnished by the applicant to the receiving agency.

(a1) **(See note)** Expired.

(b) Priority Factors. — All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for funds by the receiving agency. The priority factors shall

be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. —

a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.

b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for prioritizing which applicants will receive a loan or grant. An applicant that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in a local government unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as an applicant that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards. Additional points may be awarded for actions taken toward implementation of a comprehensive land-use plan. These actions may include the adoption of a zoning ordinance or any other measure that significantly contributes to the implementation of the comprehensive land-use plan.

c. The existence of a flood hazard ordinance conforming to the requirements of Part 6 of Article 21 of Chapter 143 of the General Statutes is a general criterion for prioritizing which applicants will receive a loan or a grant. Demonstration, based on the most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department, that no portion of the applicant's jurisdiction is located within the 100-year floodplain is a general criterion equivalent to the existence of a flood hazard ordinance conforming to the requirements of Part 6 of Article 21 of Chapter 143 of the General Statutes for prioritizing which applicants will receive a loan or a grant.

(2) Wastewater Treatment Work Projects. — The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.

(3) Wastewater Collection System Projects. — The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

(4) Water Supply System Projects. — The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.

(5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorus Limits. — The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

(6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through (5) of this subsection.

(c) Assignment of Priority. — A written statement relative to each priority assigned shall be prepared by the receiving agency and shall be attached to the application. The priority assigned shall be conclusive.

(d) Failure to Qualify. — Any application filed under G.S. 159G-5(c), G.S. 159G-6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned the application shall be considered for a revolving loan or grant during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a revolving loan or grant during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time, and may amend any pending application to include additional data or information.

(e) Land-Use Plan. — Local government units are encouraged to adopt comprehensive land-use plans. The Division of Community Assistance in the Department of Commerce shall, upon request, provide technical assistance to any economically distressed local government unit in preparing a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes shall contain reasonable provisions designed to protect existing water uses and assure compliance with water quality standards and classifications in all waters of the State affected by the land-use plan. (1987, c. 796, s. 1; 1989, c. 770, s. 36; 1993 (Reg. Sess., 1994), c. 696, s. 8; c. 714, s. 8; 1997-458, s. 5.1; 1999-213, s. 6; 2000-150, s. 2; 2004-195, s. 1.8.)

Effect of Amendments. — Session Laws 2004-195, s. 1.8, effective August 17, 2004, corrected the spelling of "phosphorus" in subdivision (b)(5).

Chapter 159I.

Solid Waste Management Loan Program and Local Government Special Obligation Bonds.

Sec.
159I-30. Additional powers of units of local government; issuance of special obligation bonds and notes.

§ 159I-30. Additional powers of units of local government; issuance of special obligation bonds and notes.

(a) Authorization. — Any unit of local government may borrow money for the purpose of financing or refinancing its cost of the acquisition or construction of a project and may issue special obligation bonds and notes, including bond anticipation notes and renewal notes, pursuant to the provisions of this section and the applicable provisions of this Chapter for this purpose.

(b) Pledge. — Each unit of local government may pledge for the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, may enter into covenants to take action in order to generate the revenues, as long as the pledge of these sources for payments or the covenant to generate revenues does not constitute a pledge of the unit's taxing power.

No agreement or covenant shall contain a nonsubstitution clause which restricts the right of a unit of local government to replace or provide a substitute for any project financed pursuant to this section.

The sources of payment pledged by a unit of local government shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the special obligation bonds or notes.

After the issuance of special obligation bonds or notes, the governing body of the issuing unit may identify one or more additional sources of payment for the bonds or notes and pledge these sources, as long as the pledge of the sources does not constitute a pledge of the taxing power of the unit. Each source of additional payment pledged shall be specifically identified in the proceedings of the governing body of the unit pledging the source. The governing body of the unit may not pledge an additional source of revenue pursuant to this paragraph unless the pledge is first approved by the Local Government Commission pursuant to the procedures provided in subsection (i) of this section.

The sources of payment so pledged and then held or thereafter received by a unit or any fiduciary thereof shall immediately be subject to the lien of the pledge without any physical delivery of the sources or further act. The lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether the parties have notice thereof. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Chapter.

(b1) Security Interest. — In connection with issuing its special obligation bonds or special obligation bond anticipation notes under this Chapter, a unit of local government may grant a security interest in the project financed, or in all or some portion of the property on which the project is located, or in both. If a unit of local government determines to provide additional security as authorized by this subsection, the following conditions apply:

(1) No bond order may contain a nonsubstitution clause that restricts the right of a unit of local government to:

a. Continue to provide a service or activity; or
b. Replace or provide a substitute for any municipal purpose financed pursuant to the bond order.

(2) A bond order is subject to approval by the Commission under Article 8 of Chapter 159 of the General Statutes if it:
a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
b. Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b)(1) and (2).
The Commission approval required by this subdivision is in addition to the Commission approval required by subsection (i) of this section.

(3) No deficiency judgment may be rendered against any unit of local government in any action for breach of a bond order authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a bond order authorized by this section. This prohibition does not impair the right of the holder of a bond or note to exercise a remedy with respect to the revenues pledged to secure the bond or note, as provided in the bond order, resolution, or trust agreement under which the bond or note is authorized and secured. A unit of local government may, in its sole discretion, use tax proceeds to pay the principal of or interest or premium on bonds or notes, but shall not pledge or agree to do so.

(4) Before granting a security interest under this subsection, a unit of local government shall hold a public hearing on the proposed security interest. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(c) Payment; Call. — Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the unit of local government or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the unit. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner, upon terms and conditions determined by the unit.

(d) Interest. — The interest payable by a unit on any special obligation bonds or notes may be at such rate or rates, including variable rates as authorized in this section, as may be determined by the Local Government Commission with the approval of the governing body of the unit. This approval may be given as the governing body of the unit may direct, including, without limitation, a certificate signed by a representative of the unit designated by the governing body of the unit.

(e) Nature of Obligation. — Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be secured solely by any one or more of the sources of payment authorized by this section as may be pledged in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in

substance that the principal and interest and any premium on the bond or note are secured solely by the sources of payment pledged in the bond order, resolution, or trust agreement under which it is authorized or secured. The following limitations apply to payment from the specified sources:

(1) Any such use of these sources will not constitute a pledge of the unit's taxing power; and

(2) The unit is not obligated to pay the principal or interest or premium except from these sources.

(f) Details. — In fixing the details of bonds or notes, the unit of local government may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof as long as a credit facility supports the bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

(g) Definitions. — The following definitions apply in this section:

(1) Credit facility. — An agreement entered into by the unit with a bank, a savings and loan association, or another banking institution; an insurance company, a reinsurance company, a surety company, or another insurance institution; a corporation, an investment banking firm, or another investment institution; or any financial institution, providing for prompt payment of all or any part of the principal, or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the unit agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) Par formula. — Any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or

c. Any other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the financial position

of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

(3) Project. — Any of the following:

a. A project as defined in G.S. 159I-3.

b. Any of the following as defined in S.L. 1998-132: water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works.

c. With respect to a city, any service or facility authorized by G.S. 160A-536 and provided in a municipal service district.

(g1) Credit Facility. — The obligation of a unit of local government under a credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in this section.

(h) Term; Form. — Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the unit of local government, except that no such maturity dates may exceed the maximum maturity periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer of the unit whose signature, or a facsimile of whose signature, appears on any bonds or notes or coupons, if any, ceases to be the officer before delivery thereof, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. Any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time or the execution thereof were the proper officers to sign although at the date of the bond or note or coupon these persons may not have been the proper officers. The unit may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the unit may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the unit may determine.

(i) Local Government Commission Approval. — No bonds or notes may be issued by a unit of local government under this section unless the issuance is approved and the bonds or notes are sold by the Local Government Commission as provided in this section and the applicable provisions of this Chapter. The unit shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes, which application shall contain such information and shall have attached to it such documents concerning the proposed financing as the Secretary of the Local Government Commission may require. The Commission may prescribe the form of the application. Before the Secretary accepts the application, the Secretary may require the governing body of the unit or its representatives to attend a preliminary conference, at which time the Secretary or the deputies of the Secretary may informally discuss the proposed issue and the timing of the steps taken in issuing the special obligation bonds or notes.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as either may be amended from time to

time, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State or by any of its agencies or departments or by any unit of local government in the State. The Local Government Commission shall approve the issuance of the bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this section and the applicable provisions of this Chapter. An approval of an issue shall not be regarded as an approval of the legality of the issue in any respect. A decision by the Local Government Commission denying an application is final.

Upon the filing with the Local Government Commission of a written request of the unit requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interests of the unit and to effect the purposes of this section and the applicable provisions of this Chapter, if the sale is approved by the unit.

(j) Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the unit may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

(k) Interim Documents; Replacement. — Prior to the preparation of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when definitive bonds have been executed and are available for delivery. The unit may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(*l*) No Other Conditions. — Bonds or notes may be issued under the provisions of this section and the applicable provisions of this Chapter without obtaining, except as otherwise expressly provided in this section and the applicable provisions of this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this section, the applicable provisions of this Chapter, and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(m) Trust. — In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. The trust agreement or resolution may pledge or assign such sources of revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall

be equally and ratably secured by a lien upon the revenues pledged in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this section and of the trust agreement or resolution, except that the unit may provide in the trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(n) Applicable Provisions. — The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its bonds and notes shall apply to a unit of local government and its bonds and notes issued under this section and the applicable provisions of this Chapter, except that the source or sources of revenue pledged to pay bonds and notes of a unit of local government shall be limited as provided in this section.

The provisions of G.S. 159I-17 relating to the Agency and its trust funds and investments shall apply to a unit of local government and its trust funds and investments, except that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to remedies, the Uniform Commercial Code, investment eligibility, and tax exemption, as they relate to the Agency's bonds and notes, shall apply to a unit of local government and its bonds and notes. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 26; c. 1024, s. 38(e); 1995 (Reg. Sess., 1996), c. 742, s. 39; c. 743, s. 26; 1997-6, s. 20; 1997-307, s. 1; 2001-238, s. 1; 2004-151, ss. 2, 3.)

Effect of Amendments. — Session Laws 2004-151, ss. 2 and 3, effective August 2, 2004, deleted the last sentence of subsection (a) which read: "As used in this section, the term 'project' has the meaning provided in G.S. 159I-3 and also includes any of the following as defined in S.L. 1998-132: water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works"; in subsection (g), substituted "The following definitions apply" for "As used" in the introductory paragraph, made minor stylistic changes in subdivisions (g)(1) and (g)(2), and added subdivision (g)(3); and inserted the subsection designation and "Credit Facility" in subsection (g1).

Chapter 160A.

Cities and Towns.

Article 4A.

Extension of Corporate Limits.

Part 4. Annexation of Noncontiguous Areas.

Sec.
160A-58.1. Petition for annexation; standards.

Article 8.

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160A-176.2. Ordinances effective in Atlantic Ocean.
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Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

160A-361. Planning boards.
160A-363. Supplemental powers.
160A-364. Procedure for adopting or amending ordinances under Article.

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160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.

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160A-425.1. Unsafe buildings condemned in certain localities.
160A-428. Unsafe buildings condemned in certain localities.
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160A-480.3. Creation of Authority; additional membership.

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160A-493. Animal shelters.

Article 23.

Municipal Service Districts.

160A-536. Purposes for which districts may be established.
160A-543. Bonds authorized.

Article 27.

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160A-635. Membership; officers; compensation.

Article 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

CASE NOTES

Cited in Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

§ 160A-3. General laws supplementary to charters.

CASE NOTES

Cited in Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

§ 160A-4. Broad construction.

CASE NOTES

Discretion as to Accomplishment of Municipal Purposes. —

Although the power to impose a privilege license tax must be construed broadly to include incidental powers, a privilege license tax, standing alone, is only a tax and does not carry with it any powers wholly unrelated to its imposition or administration. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

City had the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

Article 3.

Contracts.

§ 160A-16. Contracts to be in writing; exception.

Legal Periodicals. — For article, "The Regulation of Contractual Change: A Guide to No Oral Modification Clauses for North Carolina Lawyers," see 81 N.C.L. Rev. 2239 (2003).

Article 4A.

Extension of Corporate Limits.

Local Modification. — (As to this Article) Municipalities in Craven County: 1985, c. 92, s. 2; town of Wallburg: 2004-37, s. 1 (shall not extend boundaries into Forsyth County); village of Pinehurst: 1985, c. 379, s. 4.

Part 1. Extension by Petition.

§ 160A-31. Annexation by petition.

Local Modification. — City of Concord: 2004-102, s. 1; City of Durham: 1987, c. 606; 1993, c. 342, s. 1; city of Fayetteville: 1969, c. 715; city of Greensboro: 1959, c. 1137, s. 18; city of Mount Holly: 2000-24, s. 1; city of Reidsville: 1997-343; town of Atlantic Beach: 1959, c. 395; town of Huntersville: 1999-19, s. 1; 1999-337, s. 45; town of Morrisville: 1989, c. 389, s. 1.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

III. Plans for Extending Services.
A. In General.
D. Water and Sewer Service.

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Plan Held Sufficient. —
When a city proposed the involuntary annexation of certain real property, it had to determine the use of that property at the time it prepared the service plan required by G.S. 160A-47, to determine if it complied with the urban usage percentages required under G.S. 160A-48(c)(3), and it was error to classify property according to its intended future use, rather than its use at the time the service plan was prepared. Ridgefield Props. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003).

D. Water and Sewer Service.

Annexation Denied Because Plan Did Not Provide Statutorily Required Sewer Service. — Trial court's judgment upholding an ordinance which the City of Asheville (North Carolina) passed to annex property was reversed because the court failed to recognize that the city's plan for providing services to the area it proposed to annex did not provide statutorily required sewer service. Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed, 357 N.C. 657, 589 S.E.2d 887 (2003).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Character of areas which may properly be annexed, etc.
When a city proposed the annexation of a certain area, it could combine lots in single ownership used for a common purpose into a single tract, which could then be used to determine the percentage of tracts in the area used for urban purposes, under G.S. 160A-48(c)(3), but it was impermissible for the city to combine lots being developed for commercial purposes into a single tract classified as commercial because the lots had to be used for a common purpose, and these lots were in the process of development rather than in commercial use. Ridgefield Props. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003).

Annexation of Intervening Undeveloped Land under Subsection (d). —
A city properly annexed land which was not developed for urban purposes, under G.S. 160A-48(d)(2), along with its annexation of land which was developed for urban purposes, even though the undeveloped land was not contiguous with the city's pre-annexation boundaries, because at least 60 percent of the land's external boundaries were contiguous with the developed land which was being annexed. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Plain language of G.S. 160A-48(d)(2), regarding the annexation of areas not developed for urban used, included all possible combinations which made the following equation work: the amount of border which the non-urban area shared with the municipality combined with the amount of border that the non-urban area shared with an area or areas developed for urban purposes equaled 60 percent of the border of the non-urban area, and one workable combination existed where a non-urban area touched, on at least 60 percent of its external border, only an area or areas developed for urban purposes. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Cities with 5,000 or more people could annex an outlying urban area pursuant to G.S. 160A-48(c) and the intervening undeveloped lands pursuant to G.S. 160A-48(d) so long as the entire area met the requirements of G.S. 160A-48(b). Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490,

2003 N.C. App. LEXIS 1995 (2003).

Collateral Estoppel Barred Reclassification of Land Previously Classified as "Vacant." — Original trial court decision that divided the landowner's property into commercial and "vacant" portions and the order that only the commercial portion be used on remand to determine compliance with G.S. 160A-48(c)(3) could not be construed as a license to attempt to re-classify the vacant acres. United States Cold Storage, Inc. v. City of Lumberton, 156 N.C. App. 327, 576 S.E.2d 415, 2003 N.C. App. LEXIS 124 (2003).

Collateral estoppel applied where a second trial court decision permitted a city to reclassify a landowner's vacant acres for purposes of involuntary annexation because the original decision included an adjudication that the subject area was vacant. United States Cold Storage, Inc. v. City of Lumberton, 156 N.C. App. 327, 576 S.E.2d 415, 2003 N.C. App. LEXIS 124 (2003).

Actual Minimum Urbanization Is an Essential Requirement of the Annexation Act. —

When a city proposed to annex certain property, including certain lots which were being developed for commercial purposes, it was error to classify those lots as being used for a commercial purpose, for purposes of determining compliance with G.S. 160A-48(c)(3), because the property's actual use at the time of the city's service plan was the relevant consideration, rather than a proposed future use. Ridgefield Props. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003).

Characterization of Property Held Proper. —

When a power company asserted that certain parts of its land which a city proposed to annex were not developed for industrial use, and, thus, not subject to annexation, there was sufficient evidence from which the trial court could find each tract was used in support of the company's power plant, as there was testimony that two tracts were a buffer for a cooling pond, and that two other tracts were buffers for ash ponds on the property. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Classification of Condominium Common Areas. — Common areas belonging to people who owned condominium units is residential property, and must be recognized in the city's plan for providing services to the area the City proposed to annex to provide statutorily required sewer service. Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed, 357 N.C. 657, 589 S.E.2d 887 (2003).

Section 160A-48(c)(3) contained two mandatory tests for determining the availability of an area for annexation: (1) the use test — that not less than 60 percent of the lots and tracts in the area had to be in actual use, other than for agriculture, and (2) the subdivision test — not less than 60 percent of the acreage which was in residential use, if any, and was vacant had to consist of lots and tracts of five (now three) acres or less in size. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Acreage in use for an industrial purpose was excluded from the subdivision test of the availability of acreage for annexation. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Purpose of G.S. 160A-48(d) was to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation were not yet developed for urban purposes but which constituted necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes, and for purposes of this subsection, "necessary land connection" meant an area that did not exceed 25 percent of the total area to be annexed. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Judicial Review. — Annexation ordinance could be challenged in a trial court on the basis that the provisions of G.S. 160A-48 had not been met, under G.S. 160A-50(f)(3), and judicial review of an annexation ordinance was limited to determining whether the annexation proceedings substantially complied with the requirements of the applicable annexation statute. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

§ 160A-50. Appeal.

CASE NOTES

I. In General.
II. Review by Superior Court.
III. Review by Court of Appeals.

I. IN GENERAL.

Applied in Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed, 357 N.C. 657, 589 S.E.2d 887 (2003).

II. REVIEW BY SUPERIOR COURT.

And Record Must Show Prima Facie Compliance. —

When a power company challenged the annexation of certain of its land, pursuant to G.S. 160A-50, the city properly annexed land which was not developed for urban purposes, under G.S. 160A-48(d)(2), along with its annexation of land which was developed for urban purposes, even though the undeveloped land was not contiguous with the city's pre-annexation boundaries, because at least 60 percent of the land's external boundaries were contiguous with the developed land which was being annexed. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

III. REVIEW BY COURT OF APPEALS.

Right to Appeal. — When a city proposed the involuntary annexation of certain real property, the owners of that property were entitled to seek review of the annexation ordinance passed by the city in the superior court and in the Court of Appeals. Ridgefield Props. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58.1. Petition for annexation; standards.

(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Gastonia, Hickory, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Bladenboro, Calabash, Catawba, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Leland, Louisburg, Maiden, Mayodan, Midland,

Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Swansboro, Troy, Wallace, Warsaw, Waynesville, Wendell, and Zebulon.

(b1) Repealed by Session Laws 2004-203, ss. 13(a) and 13(d), effective August 17, 2004.

(b2) A city may annex a noncontiguous area that does not meet the standard set out in subdivision (b)(2) of this section if the city has entered into an annexation agreement pursuant to Part 6 of this Article with the city to which a point on the proposed satellite corporate limits is closer and the agreement states that the other city will not annex the area but does not say that the annexing city will not annex the area. The annexing city shall comply with all other requirements of this section.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition.

(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated. (1973, c. 1173, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 4; 1997-2, s. 1; 2001-37, s. 1; 2001-72, s. 1; 2001-438, s. 1; 2002-121, s. 1; 2003-30, s. 1; 2004-203, s. 13(a), (c); 2004-57, s. 1; 2004-99, s. 1; 2004-203, ss. 13(a)-(d).)

Local Modification. — Brunswick: 2001-478, s. 1 (as to subdivision (b)(2)); Municipalities located wholly or partly in Guilford: 1987 (Reg. Sess., 1988), c. 1009, s. 6; Union: 2003-321, s. 1; city of Asheboro: 1998-203, s. 1; city of Brevard: 1987, c. 254, s. 2; 2001-105, s. 2 (as to subdivision (b)(5)) city of Durham: 1987, c. 606; city of Greensboro: 1997-344, s. 1; city of Greensville: 1999-283, s. 1; city of Henderson: 1996, 2nd Ex. Sess., c. 3, s. 1; city of Hickory: 1987, c. 179; 1999-208, s. 1; 1999-456, s. 49; city of King's Mountain: 2003-241, s. 1; city of Mooresville, 1995, c. 82, s. 1; city of Mount Airy: 1999-232, s. 1; 2003-281, s. 1; city of Mount Holly: 1985, c. 110; city of New Bern: 1989, c. 382, s. 1; 1993 (Reg. Sess., 1994), c. 605, s. 3; city of Newton: 2002-50, s. 1 (as to subdivision (b)(2)); city of Raleigh: 1998-200, s. 1; city of Reidsville: 1997-343; city of Rockingham: 1995 (Reg. Sess., 1996), c. 654, s. 1; city of Statesville: 1989 (Reg. Sess., 1990), c. 882, s. 1; city of Winston-Salem: 2004-37, s. 1 (as to subdivision (b)(2)); town of Andrews: 2003-243, s. 1 (as to certain locations); town of Apex: 1993, c. 312, s. 3; 1995, c. 82, s. 1; town of Banner Elk: 1998-77; town of Beaufort: 1995, c. 82, s. 1, 1997-432, s. 1, 2003-204, s. 1 (as to subsection (b)); town of Brookford: 1999-208, s. 1; 1999-456, s. 49; town of Canton: 1983, c. 301; 1985 (Reg. Sess., 1986), c. 979; 1997-2, s. 1; town of Clayton: 1993, c. 63, s. 1; 1999-10, s. 1; town of Cornelius: 1999-103, s. 1; town of Davidson: 1999-85, s. 1; town of Edenton: 1995 (Reg. Sess., 1996), c. 707; town of Fuquay-Varina: 1999-304, s. 1; town of Holly Springs: 1991, c. 243 (as to annexation ordinances adopted before July 1, 1993); town of Hope Mills: 1997-151, s. 1; town of Huntersville: 1999-24, s. 1; town of Kenly; 1987, c. 67; town of Kernersville: 2004-37, s. 1 (as to subdivision (b)(2)): town of Knightdale: 1987, c. 234; town of Madison (subsection (b)(2) does not apply to Madison): 1997-251, s. 2; town of Mayodan: 2001-405 (as to subdivisions (b)(4)) and (b)(5); town of Mooresville: 1997-219, ss. 2, 3; town of Morehead City: 1998-42; town of Oak Ridge: 1998-113, s. 1; town of Pittsboro: 1987 (Reg. Sess., 1988), c. 1023, s. 4.1; town of Pleasant Garden: 1997-344, s. 1; towns of Summerfield and Leland: 1997-249; town of Trent Woods: 1989, c. 382, s. 1; town of Troy:

1993, c. 159, s. 2; town of Wallace: 1995 (Reg. Sess., 1996), c. 692, s. 1; town of Wake Forest: 1989 (Reg. Sess., 1990), c. 882, s. 2(a); 1997-432, s. 1(a), (b); town of Waxhaw: 2003-273, s. 2(b); town of Weaverville: 1989, c. 181, s. 1 (applicable with respect to annexation ordinances adopted on or before June 30, 1990); 1997-151, s. 2; town of Winterville: 2001-77, s. 1 (as to subdivision (b)(2)); village of Marvin: 2002-140, s. 1 (as to subdivision (b)(5)).

Effect of Amendments. —

Session Laws 2004-57, s. 1, effective July 6, 2004, rewrote the second paragraph of subdivision (b)(5).

Session Laws 2004-99, s. 1, effective July 15, 2004, inserted "Angier" in the second paragraph of subdivision (b)(5).

Session Laws 2004-203, ss. 13(a)-(d), effective August 17, 2004, rewrote subdivision (b)(5) and repealed subdivision (b1).

Article 5.

Form of Government.

Part 4. Modification of Form of Government.

§ 160A-101. Optional forms.

CASE NOTES

Applied in Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

Article 7.

Administrative Offices.

Part 2. Administration of Council-Manager Cities.

§ 160A-148. Powers and duties of manager.

CASE NOTES

Cited in Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

Part 4. Personnel.

§ 160A-167. Defense of employees and officers; payment of judgments.

CASE NOTES

When taxpayers sued county commissioners for entering into a contract that benefitted one of the commissioners, evidence of the amount spent by the county to defend the commissioners was admissible; the actions of one of the commissioners were unquestionably outside the scope of his office, due to his clear violation of the conflict of interest statute, G.S 14-234(a), so that he was not entitled to have his defense provided by the county, and, while the actions of the other commissioners did not rise to a violation of the conflict of interest law, their actions combined with their judgment and knowledge of the ac-

tions of the commissioner who was guilty of a conflict of interest raised questions as to whether their conduct was within the course and scope of their office. Gibbs v. Mayo, 162 N.C. App. 549, 591 S.E.2d 905, 2004 N.C. App. LEXIS 252 (2004), cert. denied, — N.C. —, 599 S.E.2d 45 (2004).

Article 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

CASE NOTES

I. In General.

I. IN GENERAL.

Conflict Between Regulation Adopted by State Agency and Municipal Ordinance. — Provision of the Gastonia (North Carolina) City Code that governed outdoor billboards conflicted with a regulation that was adopted by the North Carolina Department of Transportation (DOT) to implement North Carolina's Outdoor Advertising Control Act, G.S. 136-126 et seq., and was preempted by the DOT's regulation. Morris Communs. Corp. v. Bd. of Adjustment, 159 N.C. App. 598, 583 S.E.2d 419, 2003 N.C. App. LEXIS 1530 (2003), appeal dismissed, 357 N.C. 658, 590 S.E.2d 269 (2003).

Ordinance for State-Owned Beach. — Because the renourishment projects undertaken by the town to restore ocean turtle habitat were publicly financed sand placement projects, title to the newly-created beach was vested in the State, and despite the protests of ocean front property owners, the appellate court could find nothing in the State Lands Act, codified at G.S. 146-1 et seq., which limited the authority of a town or city to enact regulations in order to protect a public beach located within its municipal limits. Slavin v. Town of Oak Island, 160 N.C. App. 57, 584 S.E.2d 100, 2003 N.C. App. LEXIS 1670 (2003).

§ 160A-175. Enforcement of ordinances.

CASE NOTES

City had the authority to require confirmation of a sexually oriented business's zoning compliance in its business privilege license application and the authority to reject the business's privilege license application where zoning compliance was found wanting. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

§ 160A-176.2. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Calabash, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only. (1991, c. 494, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 801; 1993, c. 67, s. 5; c. 125, s. 2; 1993 (Reg. Sess., 1994), c. 625, s. 1; 1997-48, s. 1; 2002-141, s. 1; 2004-203, s. 55.)

Effect of Amendments. — Session Laws 2004-203, s. 55, effective August 17, 2004, inserted "Calabash" preceding "Cape Carteret" in subsection (b).

§ 160A-181.1. Regulation of sexually oriented businesses.

CASE NOTES

Constitutionality of City Zoning Ordinances. — City zoning requirements regarding sexually oriented businesses set forth by the city's zoning ordinances, pursuant to G.S. 160A-181.1, and imposed upon the city tax collector by a city ordinance, comported with the Constitutional requirements established by the United States Supreme Court; therefore, the city possessed the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

§ 160A-194. Regulating and licensing businesses, trades, etc.

CASE NOTES

Cited in Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

§ 160A-199. Regulation of outdoor advertising.

(a) As used in this section, the term "off-premises outdoor advertising" includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A city may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the city in accordance with the applicable provisions of this Chapter.

(c) A city shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(d) No city may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

(1) The city and the owner of the nonconforming off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.

(2) The city and the owner of the nonconforming off-premises outdoor advertising enter into an agreement pursuant to subsection (k) of this section.

(3) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace.

(4) The removal is required for opening, widening, extending or improving streets or sidewalks, or for establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311, and the city allows the off-premises outdoor advertising to be relocated to a comparable location.

(5) The off-premises outdoor advertising is subject to removal pursuant to statutes, ordinances, or regulations generally applicable to the demolition or removal of damaged structures.

(e) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal. Monetary compensation shall be determined based on:

(1) The factors listed in G.S. 105-317.1(a); and

(2) The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(f) If the parties are unable to reach an agreement under subsection (e) of this section on monetary compensation to be paid by the city to the owner of the nonconforming off-premises outdoor advertising sign for its removal, and the city elects to proceed with the removal of the sign, the city may bring an action in superior court for a determination of the monetary compensation to be paid. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the city shall own the sign.

(g) In lieu of paying monetary compensation, a city may enter into an agreement with the owner of a nonconforming off-premises outdoor advertising sign to relocate and reconstruct the sign. The agreement shall include the following:

(1) Provision for relocation of the sign to a site reasonably comparable to or better than the existing location. In determining whether a location is comparable or better, the following factors shall be taken into consideration:

a. The size and format of the sign.

b. The characteristics of the proposed relocation site, including visibility, traffic count, area demographics, zoning, and any uncompensated differential in the sign owner's cost to lease the replacement site.

c. The timing of the relocation.

(2) Provision for payment by the city of the reasonable costs of relocating and reconstructing the sign including:

a. The actual cost of removing the sign.

b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the sign.

c. The actual cost of installing the sign at the new location.

d. An amount of money equivalent to the income received from the lease of the sign for a period of up to 30 days if income is lost during the relocation of the sign.

(h) For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, a city, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it deems appropriate.

(i) If a city has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, and within 120 days after the initial notice by the city the parties have not been able to agree that the site or sites offered by the city for relocation of the sign are reasonably comparable to or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall

select one arbitrator and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.

(j) If the arbitration results in a determination that the site or sites offered by the city for relocation of the nonconforming sign are not comparable to or better than the existing site, and the city elects to proceed with the removal of the sign, the parties shall determine the monetary compensation under subsection (e) of this section to be paid to the owner of the sign. If the the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination, and the city elects to proceed with the removal of the sign, then the city may bring an action in superior court for a determination of the monetary compensation to be paid by the city to the owner for the removal of the sign. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the city shall own the sign.

(k) Notwithstanding the provisions of this section, a city and an off-premises outdoor advertising sign owner may enter into a voluntary agreement allowing for the removal of the sign after a set period of time in lieu of monetary compensation. A city may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(*l*) A city has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(m) This section does not apply to any ordinance in effect on the effective date of this section. A city may amend an ordinance in effect on the effective date of this section to extend application of the ordinance to off-premises outdoor advertising located in territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A city may repeal or amend an ordinance in effect on the effective date of this section so long as the amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section.

(n) The provisions of this section shall not be used to interpret, construe, alter or otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter 40A or Chapter 136 of the General Statutes.

(o) Nothing in this section shall limit a city's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising. (2004-152, s. 2.)

Editor's Note. — Session Laws 2004-152, s. 4, made this section effective August 2, 2004.

Article 9.

Taxation.

§ 160A-206. General power to impose taxes.

CASE NOTES

Authority to Require Compliance with Zoning Requirements. — City had the authority to require confirmation of a sexually oriented business's zoning compliance in its business privilege license application and the authority to reject the business's privilege license application where zoning compliance was found wanting. Fantasy World, Inc. v. Greens-

boro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

§ 160A-211. Privilege license taxes.

CASE NOTES

City had the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties. (1997-361, s. 4; 1997-364, s. 5; 1997-410, s. 3; 1997-447, s. 2; 1998-112, s. 4; 1999-258, s. 3; 1999-302, s. 2; 2000-103, s. 9; 2001-11, s. 2; 2001-365, s. 3; 2001-434, s. 9; 2001-439, s. 18.1; 2002-94, s. 4; 2002-95, s. 3; 2002-138, s. 2; 2002-139, s. 2; 2002-159, s. 62; 2003-281, s. 14; 2004-105, s. 3; 2004-170, ss. 36(b), 42(b); 2004-199, s. 60(b).)

Effect of Amendments. —

Session Laws 2004-105, s. 3, effective July 16, 2004, inserted "Franklin" in the list in subsection (g).

Session Laws 2004-170, ss. 36.(b), effective October 1, 2004, substituted "20th" for "fifteenth" in subsection (d).

Session Laws 2004-170, s. 42.(b), as amended by Session Laws 2004-199, s. 60(b), effective July 1, 2004, and applicable to taxes that accrue on or after that date, added subsection (f1).

Article 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — (As to Article 12) Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1, 2; (As to Article 12) Burke: 1987 (Reg. Sess., 1988), c. 1002; Burlington: 1989, c. 6; Cherokee: 1983 (Reg. Sess., 1984), c. 939; Clay: 1983, c. 353; (As to Article 12) Cleveland: 1995, c. 201, s. 1; Cumberland: 1983 (Reg. Sess., 1984), c. 1079; Craven: 1985, c. 13; Dare: 1987, c. 241; Duplin: 1989, c. 411, ss. 1.1, 1.2; 1989 (Reg. Sess., 1990), c. 1006, s. 1; Edgecombe: 1981, c. 971; Gaston: 1983, c. 405; Graham and Graham County Industrial Development Authority: 1985 (Reg. Sess., 1986), c. 824; Halifax: 1987, c. 238; Harnett: 1985, c. 16; Haywood and Jackson: 1981, c. 137; Johnston: 1989, c. 597, s. 1; Jones: 1983 (Reg. Sess., 1984), c. 960; Lee: 1987 (Reg. Sess., 1988), c. 933; (As to Article 12) 2002-81, s. 1; Lenoir: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 1002; 2000-48, s. 2; Macon: 1979, c. 235; 1989 (Reg. Sess., 1990), c. 998; Madison: 1981, c. 174; McDowell: 1987 (Reg. Sess., 1988), c. 909; 1989 (Reg. Sess., 1990), c. 833, s. 2; Pamlico: 1985, c. 386; 1987, c. 214; (As to Article 12) Pasquotank: 1979, c. 129; 1991, c. 61; Pender: 1989, c. 503, s. 1; 1989 (Reg. Sess., 1990), c. 847, s. 1; 1993, c. 52, s. 1; Pitt: 1983 (Reg. Sess., 1984), c. 942; Rowan: 1987, c. 157; Sampson: 1985 (Reg. Sess., 1986), c. 894; c. 943, s. 2; (As to Article 12) Sanford: 1995, c. 154, s. 1; Scotland: 1987, c. 57; Swain: 1981, c. 137; Transylvania: 1989, c. 4; (As to Article 12) Tyrrell: 1987, c. 9; 2001-32; Washington: 1979, 2nd Sess., c. 1120; 1985, c. 134; Wayne: 1987 (Reg. Sess., 1988), c. 1006, s. 7; (As to Article 12) 1997-170, s. 1; 2004-94; city

of Asheboro: 1987, c. 593; city of Asheville: 1979, c. 317; 1981, c. 631; 1985, c. 721; city of Bessemer City: 1995 (Reg. Sess., 1996), c. 563, s. 1; city of Brevard: 1985, c. 79; 1987 (Reg. Sess., 1988), c. 905; 1999-8, s. 1; (As to Article 12) 1995 (Reg. Sess., 1996), c. 671, s. 1; city of Burlington: 1985 (Reg. Sess., 1986), c. 829; 1987, c. 121; 1989 (Reg. Sess., 1990), cc. 831, 832; (As to Article 12) 1991, c. 198; 1993, c. 276, s. 1; c. 277, s. 3; 1995 (Reg. Sess., 1996) c. 610, s. 1; 1997-445, s. 2; (As to Article 12) 2001-190, s. 4; city of Charlotte: (As to Article 12) 1981, c. 55; 1983, c. 92; 2000-26, s. 1; city of Clinton: 1985 (Reg. Sess., 1986), c. 943, s. 2; city of Durham: 1987, c. 756, s. 4; city of Elizabeth City: 1979, c. 129; (As to Article 12) city of Goldsboro: 2004-94; city of Kinston: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 918; c. 1002; (As to Article 12) 1993, c. 265, s. 1; 2000-48, s. 2; city of Lenoir: 1985, c. 493; (As to Article 12) city of Lincolnton: 1995, c. 57, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Morganton: 1987, c. 265, s. 2; 1987 (Reg. Sess., 1988), c. 1002; city of Mount Airy: 1985, c. 282; 1998-82; 2003-281, s. 1 (as to Article 12); city of New Bern: 1998-29; city of Oxford: 1989 (Reg. Sess., 1990), c. 833, s. 1; city of Raleigh: 1997-39, s. 1; city of Roanoke Rapids: 1997-39, s. 1; (As to Article 12) 1991, c. 197; 2003-43, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Shelby: 1999-5, s. 1; city of Statesville: 1987, c. 265, s. 2; 1989, c. 241, s. 1; (As to Article 12) city of Thomasville: 2002-53, s. 1; city of Washington: 1983 (Reg. Sess., 1984), c. 941; (As to Article 12) 1993, c. 133, s. 1; city of Whiteville: 1987 (Reg. Sess., 1988), c. 1018, s. 1; city of Wilson: 1983, c. 748; town of Ayden: 1991, c. 58; town of Black Creek: 1985, c. 286; town of Cerro Gordo: 1995 (Reg. Sess. 1996), c. 708; town of Carrboro: 1987, c. 476, s. 1; 1989, c. 97, s. 1; town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 11.1; town of Elkin: 1997-130; 1997-131; (As to Article 12) town of Fairmont: 2001-2; (As to Article 12) town of Faison: 1998-40, s. 3; town of Garner: 1989, c. 270, s. 1; town of Greenevers: 1985, c. 34; town of Kernersville: 1987 (Reg. Sess., 1988), c. 920; 1989 (Reg. Sess., 1990), c. 983; (As to Article 12) 2001-80; (As to Article 12) town of Maxton: 1995 (Reg. Sess., 1996), c. 576, s. 1; town of Pilot Mountain: 1985, c. 291, ss. 6, 8; (as to Article 12) town of Pinebluff: 2003-48, s. 1, as amended by 2004-53, s. 1; (as to Article 12) town of Red Springs: 1995, c. 203, s. 1; town of Tabor City: 1987 (Reg. Sess., 1988), c. 919; town of Tryon: 1987, c. 56; town of Wake Forest: 1985, c. 195; (As to Article 12) town of Wallace: 1998-40, s. 1; town of Waynesville: 1997-139, s. 1; village of Pinehurst: 1989, c. 375, ss. 1, 1.1; (As to Article 12) Asheville-Buncombe Technical Community College: 2000-99, s. 1; (As to Article 12) Bladen County Board of Education: 2003-122, ss. 1, 2; (As to Article 12) Burlington City Board of Education: 1993 (Reg. Sess., 1994), c. 639, s. 1; (As to Article 12) Clinton City Board of Education: 2004-69; Clinton-Sampson Agri-Civic Center Commission: 1985 (Reg. Sess., 1986), c. 943, s. 2; Foothills Regional Airport Authority: 2000-9, s. 7; Mayland Community College: 2003-320, s. 1; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, 2nd Ex. Sess., c. 16, s. 1; (As to Article 12) Wilkes County Board of Education: 2001-58.

§ 160A-272. Lease or rental of property.

Local Modification. — Cabarrus: 2000-88, s. 2; Columbus: 1995 (Reg. Sess., 1996), c. 709, s. 1; Duplin: 1987, c. 50; 1987 (Reg. Sess., 1988), c. 1006, s. 6; Lincoln: 1983 (Reg. Sess., 1984), c. 944; 1989, c. 411, s. 1; Montgomery: 2001-485, s. 3.1; Pasquotank: 1991, c. 382; Sampson: 1985 (Reg. Sess., 1986), c. 943, s. 2; Tyrrell: 1987, c. 781, s. 1.1; Wake: 1979, c. 275; Wilson: 1983, c. 239; city of Asheboro: 1989 (Reg. Sess., 1990), c. 867; city of Charlotte: 2000-26, s. 1; city of Concord: 1985, c. 355, as amended by 2000-88, s. 2; city of Gastonia: 1991, c. 557, s. 1; city of Mount Airy: 2003-281, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Statesville: 1983 (Reg. Sess., 1984), c. 940; 1987 (Reg. Sess., 1988), c. 883; town of Beaufort: 1979, c. 371; town of Columbia: 1987, c. 781, s. 1.1; town of Hope Mills: 1985, c. 285; town of Kenansville: 1987, c. 50; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Matthews: 2001-102; town of Newport: 1998-30; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Duplin County Board of Education: 1987, c. 50; Elizabeth City—Pasquotank County Airport Authority: 1991, c. 26; Goldsboro-Wayne Airport Authority: 1987 (Reg. Sess., 1988), c. 1006, s. 5; Maryland Community College: 2003-320, s. 1, as amended by 2004-203, s. 81; Warren Field Airport Commission: 2002-84, s. 1.

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-298. Railroad crossings.

CASE NOTES

Applied in Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

§ 160A-300. Traffic control.

CASE NOTES

Section Does Not Impose Affirmative Duty. —

City has been held to have owed the plaintiffs no affirmative duty to control traffic on a city street when G.S. 160A-300 authorized the city to control traffic, but did not expressly require it to do so; a city cannot be held liable for delaying the installation of safety devices at a railroad crossing because the city, although authorized to require safety devices, has no duty to have the warning or safety devices in place. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

§ 160A-300.1. Use of traffic control photographic systems.

CASE NOTES

Constitutionality. — An individual who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 lacked standing to challenge the statute on the grounds of a violation of his right to due process and equal protection because the individual did not avail himself of any of the procedural processes available under the statute. Furthermore, even if the individual had standing, the statute was civil in nature and the process was sufficient in a civil setting to afford the citation recipient due process. In addition, the individual failed to allege membership in any suspect class. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Use of Asessments. — The assessments made pursuant to G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306 constituted monetary payments which, although levied in a civil setting, were penal in nature. Where the assessments did not accrue to the state, the "civil penalties" assessed by a city pursuant to the ordinance were not subject to the requirements N.C. Const. art. IX, § 7. The fines and other amounts received by the city and the other defendants under the statute and the ordinance were not required to be appropriated and used exclusively for maintaining free public schools in the county. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Standing. — An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a challenge to the statute and the ordinance based on N.C. Const. art. IX, § 7; he did not, however, have standing to bring this claim, as he did not allege that (1) there had been a demand on and refusal by the proper authorities to institute proceedings for the protection of the interests of the political agency or political subdivision; or (2) a demand on such authorities would have been useless. Nor could the individual allege that a demand on the proper authorities, a school board, would have been useless since the school board had protected its own interests by asking for declaratory relief. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a challenge to

the statute and the ordinance based on N.C. Const. art. IX, § 7; while the court concluded that the assessments in question constituted monetary payments. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

Local Modification. — City of Albemarle: 2002-80, s. 1; city of Greenville: 1998-80; 2004-30, s. 1; city of Henderson: 2004-30, s. 1; city of Lumberton: 1995, c. 53, ss. 1, 2; city of Winston-Salem: 2000-104, s. 2; town of Waynesville: 2004-30, s. 1.

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

CASE NOTES

Authority to Expand a Sewer System. — A condemnation procedure was proper where the condemnation satisfied the public use and public benefit test as all city residents, including the landowners whose property was being condemned, and provided an equal right to connect to the expanded sewer system, which was an essential service. Tucker v. City of Kannapolis, 159 N.C. App. 174, 582 S.E.2d 697, 2003 N.C. App. LEXIS 1442 (2003).

Cited in County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

§ 160A-312. Authority to operate public enterprises.

CASE NOTES

III. Water and Sewage Service.

III. WATER AND SEWAGE SERVICE.

City Authorized to Expand Sewer System. — A condemnation procedure was proper because the intended use of the condemnation satisfied the public use and public benefit test as all city residents, including the landowners whose property was being condemned, and provided an equal right to connect to the expanded sewer system, which was an essential service. Tucker v. City of Kannapolis, 159 N.C. App. 174, 582 S.E.2d 697, 2003 N.C. App. LEXIS 1442 (2003).

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

Local Modification. — (As to Article 19) Cabarrus and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; 2004-39, s. 5; (As to this section) Davie: 1989 (Reg. Sess., 1990), c. 853; Durham: 1989 (Reg. Sess., 1990), c. 841, s. 3; Johnston: 1985: (Reg. Sess., 1986), c. 804; Mecklenburg: 1971, c. 860; 1991, (Reg. Sess., 1992), c. 884; (As to Article 19) Orange and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; Pamlico (except for town of Minnesott Beach): 1977, c. 478, s.3; 2001-134; Pitt: 2002-19, s. 1; (As to Article 19) Pitt: 2002-19, s. 1; (As to Article 19) Wake: 1998-192, s. 1, as amended by 2000-66, s. 1; city of Belmont: 1991, c. 596, s. 3; (As to Article 19) city of Charlotte: 1987, c. 123; 1991, c. 161; 2001-228; city of Mount Holly: 1991, c. 289, s. 3; (As to Article 19) city of Raleigh: 1998-192, s. 1, as amended by 2000-66, s. 1; city of Whiteville: 2000-78, s. 1; town of Aberdeen: 1985, c. 308; town of Apex: 1993, c. 312, ss. 1, 2; (As to Article 19) 1998-192, s. 1, as amended by 2000-66, s. 1; (As to Article 19) town of Bethel: 2002-19, s. 1; town of Carthage: 1999-239, s. 1; (As to Article 19) town of Cary: 1998-192, s. 1, as amended by 2000-66, s. 1; (As to subsection (a) of this section) town of Chadbourn: 2004-4, s. 1; (As to Article 19) town of Cornelius: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Davidson: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Faison: 1993 (Reg. Sess., 1994), c. 769, s. 28.16; town of Farmville: 1999-43, s. 1; (As to Article 19) town of Garner: 1998-192, s. 1, as amended by 2000-66, s. 1; (As to Article 19) town of Grifton: 1993, c. 53, s. 1; town of Huntersville: 1983: (Reg. Sess., 1984), c. 966; 1995, c. 362, s. 3.1; 1997-106; town of Kings Mountain: 1999-259, s. 1; town of Knightdale: 1985, c. 564; (As to Article 19) town of Matthews: 1991, c. 161; 1999-69, s. 1; (As to Article 19) town of Mint Hill: 1991, c. 161; 1993 (Reg. Sess., 1994), c. 590; s. 1; town of Mooresville: 1991, c. 289, s. 2; town of Nashville: 1985, c. 217; town of Navassa: 1987, c. 10; town of Pinebluff: 1999-35, ss. 1, 2; (As to Article 19) town of Pineville: 1991, c. 161; town of Pittsboro: 1987, c. 460, s. 30; town of River Bend: 1987, c. 26; 1997-363, s. 1; (As to Article 19) town of St. James, 1999-241, s. 1; town of St. Pauls: 1987, c. 200; town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 1; town of Southern Pines: 1985, c. 308; town of Stanley: 1991, c. 289, s. 3; town of Tabor City: 1997-281, s. 2; town of Taylortown: 1987, c. 601, s. 2; town of Unionville: 1999-90, s. 2; town of Wake Forest: 1985, c. 196; town of Warsaw: 1985, c. 5; town of Williamston: 1997-281, s. 1; village of Pinehurst: 1985, c. 379, s. 4; c. 308; 1991 (Reg. Sess., 1992), c. 808, s. 2; village of Sugar Mountain: 1985, c. 395; village of Woodlake: 1991 (Reg. Sess., 1992), c. 859, s. 1 (contingent on referendum).

Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas. — Session Laws 2004-161, ss. 4.1 to 4.5, create the Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas.

Session Laws 2004-161, s. 4.2, provides: "The Commission shall study the following concerning residential and urban development encroachment on military bases and training areas:

"(1) Restricting the zoning in the areas around military bases and training areas.

"(2) How encroachment affects deed registration.

"(3) Protecting the areas around military bases and training areas by purchasing development rights and buffers using all available State trust funds and other available funding mechanisms.

"(4) Any other issue the Commission considers relevant."

Session Laws 2004-161, s. 4.4, provides that the Commission shall submit a final report of findings and recommendations, including any legislative recommendations, to the 2005 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2005 General Assembly.

§ 160A-361. Planning boards.

(a) Any city may by ordinance create or designate one or more boards or commissions to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(5) Advise the council concerning the use and amendment of means for carrying out plans;

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;

(7) Perform any other related duties that the council may direct.

(b) A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;

(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27; 2004-199, s. 41(a).)

Effect of Amendments. — Session Laws 2004-199, s. 41(a), effective October 1, 2004, substituted "boards or commissions" for "agencies" in the introductory language of subsection (a); and substituted "A board or commission" for "An agency" in the introductory language of subsection (b).

§ 160A-363. Supplemental powers.

A city or its designated planning board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1983, c. 377, s. 9; 2004-199, s. 41(b).)

Effect of Amendments. — Session Laws 2004-199, s. 41(b), effective October 1, 2004, substituted "board" for "agency" throughout.

§ 160A-364. Procedure for adopting or amending ordinances under Article.

(a) Before adopting or amending any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base,the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58; 1977, c. 912, s. 5; 1979, 2nd Sess., c. 1247, s. 36; 1981, c. 891, s. 1; 2004-75, s. 2.)

Effect of Amendments. — Session Laws 2004-75, s. 2, effective July 1, 2004, added subsection (b).

CASE NOTES

G.S. 160A-364 plainly states that it is the "city council" that shall hold a public hearing and that it is notice of that public hearing which must be given; this language in no way permits the argument that notice can somehow be given for a hearing before a body other than a city council in order to satisfy the statute. Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

Notices Held Inadequate. —

Amendment to a town's development ordinance, which would have prohibited convenience stores in certain zoning districts, was invalid under G.S. 160A-364 and under the development ordinance itself because the pre-adoption notice did not satisfy requirements for adequacy of description and publication; the fact that the landowner who challenged the amendment had actual notice prior to adoption did not prevent the amendment from being void. Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

Part 2. Subdivision Regulation.

§ 160A-376. Definition.

Local Modification. — Town of Rose Hill: 1995 (Reg. Sess., 1996), c. 565, s. 1. Session Laws 2004-46, s. 1, repealed local modifications by S.L. 1997-246, s. 2, and S.L. 2001-50, s. 2, effective January 1, 2005.

Part 3. Zoning.

§ 160A-381. Grant of power.

Local Modification. — Town of Chapel Hill: (as to subsection (d), and applicable in that area where the town exercises territorial planning jurisdiction, including any area under the town's jurisdiction pursuant to a Joint Planning Agreement with Orange County) 2003-237, s. 2; 2004-27, s. 1.

CASE NOTES

I. In General.
II. Power to Zone.
V. Conditional or Special Use Permits.

I. IN GENERAL.

City had the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

II. POWER TO ZONE.

Zoning Ordinance Validly Enacted Under Delegated Authority. — Wrightsville Beach, N.C., Zoning Ordinance § 155.009(A) was properly and validly established under a grant of power contained in 1981 N.C. Sess. Laws 904 and G.S. 160A-381(a); accordingly, where property owners' home was constructed too close to the property line, in violation of the ordinance's setback requirements, the town building inspector's refusal to issue them a certificate of occupancy was proper. Prewitt v. Town of Wrightsville Beach, 161 N.C. App. 481, 595 S.E.2d 442, 2003 N.C. App. LEXIS 2192 (2003).

V. CONDITIONAL OR SPECIAL USE PERMITS.

Scope of Review of Denial of Permit. — Where applicants for a conditional use permit did not show that a proposed crematorium would not be detrimental to or endanger the general welfare, they did not show that the proposed use would comply with all of a city's standards; in affirming the denial of the application, the trial court applied the proper standard of review in the nature of certiorari pursuant to G.S. 160A-381(c), and its decision was supported by substantial evidence. Butler v. City Council of Clinton, 160 N.C. App. 68, 584 S.E.2d 103, 2003 N.C. App. LEXIS 1672 (2003).

§ 160A-385. Changes.

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

§ 160A-385.1. Vested rights.

CASE NOTES

Cited in Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

§ 160A-388. Board of adjustment.

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Appellate Jurisdiction of Board. — City zoning board of adjustment had jurisdiction to hear an appeal taken from the municipal tax collector's denial of a business privilege license application based upon his assessment that the business was in violation of local zoning laws. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

Issuance of Special Permit Upheld. — Application which a developer submitted, seeking a special use permit allowing construction of an apartment complex on land that was zoned for residential and agricultural use was not defective because it was signed by the developer, but not by people who owned the land, and the trial court found that the board's decision granting the special use permit was supported by the record. Cox v. Hancock, 160 N.C. App. 473, 586 S.E.2d 500, 2003 N.C. App. LEXIS 1829 (2003).

II. JUDICIAL REVIEW.

Constitutional Sufficiency of Review. — City tax collector's zoning decision to deny a business privilege license application was immediately appealable to the city zoning board of adjustment, and the board's decision could be reviewed in superior court upon the filing of a petition for certiorari; the judicial relief provided in G.S. 160A-388 was constitutionally sufficient because the license applicant was afforded the possibility of sufficiently prompt judicial review. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

De Novo Review. — A zoning board of adjustment's determination of nonconforming use is subject to a review de novo. Welter v. Rowan County Bd. of Comm'rs, 160 N.C. App. 358, 585 S.E.2d 472, 2003 N.C. App. LEXIS 1802 (2003).

Superior court properly exercised its scope of review in affirming a decision by a city zoning board of adjustment to affirm the denial of a business privilege license by a city tax collector for a sexually oriented business that sought to operate in violation of a city ordinance because competent, material, and substantial evidence existed in the record to support the decision. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, — N.C. —, 599 S.E.2d 43 (2004).

§ 160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.

All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings and land by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within a conditional use district without approval of the Council of State or its designate. (1951, c. 1203, s. 1; 1971, c. 698, s. 1; 1985, c. 607, s. 2; 2004-199, s. 41(e).)

Effect of Amendments. — Session Laws 2004-199, s. 41(e), effective October 1, 2004, inserted "and land" following "use of buildings" in the first paragraph; and substituted "within conditional use district without approval of the Council of State or its designate" for "within an overlay district or a special use or conditional use district without approval of the Council of State" in the second paragraph.

Part 3C. Historic Districts and Landmarks.

§ 160A-400.7. Historic Preservation Commission.

Local Modification. — Wake: 2004-11; Town of Nags Head: 2003-46, s. 1.

Part 4. Acquisition of Open Space.

§ 160A-403. Counties or cities authorized to acquire and reconvey real property.

Local Modification. — Guilford: 1987, c. 669, s. 2; cities of Greensboro and High Point: 1987, c. 669, s. 2; town of Chapel Hill: 2004-119.

Part 5. Building Inspection.

§ 160A-425.1. Unsafe buildings condemned in certain localities.

(a) Residential Building and Nonresidential Building or Structure. — Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Residential Building and Nonresidential Building or Structure. — In addition to the authority granted in subsection (a) of this section, an inspector may declare a residential building or nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of a development zone under G.S. 105-129.3A, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(d) This Section applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, and Lumberton, and the Towns of Garner, Franklin, Hope Mills and Spring Lake only. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2002-118, s. 1; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1.)

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to G.S. 160A-426 have been codified as this section.

The historical citation from G.S. 160A-426 has been added to this section at the direction of the Revisor of Statutes.

§ 160A-426. Unsafe buildings condemned in other localities.

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to this section have been codified as G.S. 160A-425.1.

§ 160A-428. Unsafe buildings condemned in certain localities.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-425.1 or G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service,

(1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
   a. Constitutes a fire or safety hazard.
   b. Is dangerous to life, health, or other property.
   c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
   d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 2.)

Editor's Note. — At the direction of the Revisor of Statutes, "G.S. 160A-425.1 or" has been inserted in the introductory paragraph.

§ 160A-432. Enforcement.

(a) [Action Authorized.] — Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(a1) [Removal of Building: Certain Localities.] — In the case of a residential building or nonresidential building or structure declared unsafe under G.S. 160A-425.1, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by

the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

This subsection applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, and Lumberton, and the Towns of Garner, Franklin, Hope Mills and Spring Lake.

(b) [Reomoval of Building: Other Localities.] — In the case of a nonresidential building or structure declared unsafe under G.S. 160A-426, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(b1) Additional Lien. — The amounts incurred by the city in connection with the removal or demolition shall also be a lien against any other real property owned by the owner of the building or structure and located within the city limits or within one mile of the city limits, except for the owner's primary residence. The provisions of subsection (b) of this section apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(c) [Nonexclusive Remedy.] — Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 3; 2001-386, s. 2; 2001-448, s. 2; 2002-118, s. 2; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1.)

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to G.S. 160A-432(b) have been codified as subsection (a1) of this section. The historical citation has been updated with modifying statutes at the direction of the Revisor of Statutes.

Part 6. Minimum Housing Standards.

§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.

Local Modification. — City of Greensboro: 2003-76, s. 1, 2003-320, s. 2, 2004-70, s. 1; city of New Bern: 1985 (Reg. Sess., 1986), c. 876; city of Reidsville: 1991 (Reg. Sess., 1992), c. 996, s. 1, 2004-98, s. 2; city of Roanoke Rapids: 2003-76, s. 1; 2003-320, s. 2, 2004-70, s. 1; city of Winston-Salem: 2004-70, s. 1, 2004-98, s. 1.

ARTICLE 20.

Interlocal Cooperation.

Part 4. Facility Authorities.

§ 160A-480.3. Creation of Authority; additional membership.

(a) Creation. — An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) Membership. — An authority shall have 10 or 21 members. Members shall be chosen for terms as follows:

(1) Five shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county;

(2) Five shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. Four members shall be appointed by the board of commissioners of that county, one of whom at the time of appointment is a resident of the municipality with the second largest population in the county, according to the most recent decennial federal census;

b. Four members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census;

c. Two members shall be appointed jointly by the mayors of all the cities in that county.

d. The Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee.

Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subsection.

Neither the board of commissioners nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms

expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. The third member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2003. The third member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2003. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the Speaker of the House of Representatives, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the President Pro Tempore of the Senate, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. The second member appointed under sub-subdivision (3)c. of this section shall serve an initial term expiring July 1, 2003. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. — The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. — The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws. Any bylaw that conflicts with the declared public policy of the State as expressed by law is void and unenforceable. The bylaws may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.

(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.

(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. — An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. — An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. — If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or

(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government or the Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of such contract. Other provisions of law

notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter.

It is not a violation of this subsection for the Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee, to participate in discussion of or to vote on any matter, including but not limited to the execution of any contract by the Authority, where the matter relates to the interest of a constituent institution of The University of North Carolina within the county. (1995, c. 458, s. 1; 1997-68, s. 1; 2000-181, s. 2.5; 2001-311, ss. 1, 2; 2004-158, ss. 3.1, 3.2, 3.3.)

Effect of Amendments. — Session Laws 2004-158, ss. 3.1, 3.2, 3.3, effective August 2, 2004, in subsection (b), substituted "10 or 21" for "eight or 19" in the introductory paragraph and substituted "Five" for "Four" in subdivisions (b)(1) and (b)(2).

Article 21.

Miscellaneous.

§ 160A-493. Animal shelters.

A city may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. The animal shelters shall meet the same standards as animal shelters regulated by the Department of Agriculture pursuant to its authority under Chapter 19A of the General Statutes. (1973, c. 426, s. 73.1; 2004-199, s. 39(b).)

Effect of Amendments. — Session Laws 2004-199, s. 39(b), effective August 17, 2004, added the second sentence.

Article 23.

Municipal Service Districts.

§ 160A-536. Purposes for which districts may be established.

(a) Purposes. — The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

(1) Beach erosion control and flood and hurricane protection works.

(1a) **(For applicability see note)** Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter.

(2) Downtown revitalization projects.

(2a) Urban area revitalization projects.
(2b) Transit-oriented development projects.
(3) Drainage projects.
(3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(3b) **(For applicability see note)** Lighting at interstate highway interchange ramps.
(4) Off-street parking facilities.
(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

(b) Downtown Revitalization Defined. — As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

(c) Urban Area Revitalization Defined. — As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State Budget Officer and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.
(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.

(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(c1) Transit-Oriented Development Defined. — As used in this section, the term "transit-oriented development" includes the provision within a public transit area of any service or facility listed in this subsection. A public transit area is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A mass transit line is a rail line along which a public transportation service operates or a busway or guideway dedicated to public transportation service. A busway is not a mass transit line if a majority of its length is also generally open to passenger cars and other private vehicles more than two days a week.

The following services and facilities are included in the definition of "transit-oriented development" if they are provided within a transit area:

(1) Any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section.

(2) Passenger stops and stations on a mass transit line.

(3) Parking facilities and structures associated with passenger stops and stations on a mass transit line.

(4) Any other service or facility, whether public or public-private, that the city may by law provide or participate in within the city, including retail, residential, and commercial

(d) Contracts. — A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. (1973, c. 655, s. 1; 1977, c. 775, ss. 1, 2; 1979, c. 595, s. 2; 1985, c. 580; 1987, c. 621, s. 1; 1999-224, s. 1; 1999-388, s. 1; 2004-151, s. 1; 2004-203, s. 5(m).)

Effect of Amendments. — Session Laws 2004-151, s. 1, effective August 2, 2004, inserted subdivision (a)(2b); deleted "municipal" preceding "service district" in the last sentence of subsection (b); and added subsection (c1).

Session Laws 2004-203, s. 5(m), effective August 17, 2004, substituted "Budget Officer" for "Planning Officer" in subsection (c).

§ 160A-543. Bonds authorized.

A city may incur debt under general law to finance services, facilities or functions provided within a service district. If a proposed general obligation bond issue is required by law to be submitted to and approved by the voters of the city, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than city wide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire city and by a majority of the total of those voting in all of the affected or to be affected service districts. (1973, c. 655, s. 1; 2004-151, s. 4.)

Effect of Amendments. — Session Laws 2004-151, s. 4, effective August 2, 2004, substituted "incur debt under general law" for "issue its general obligation bonds under the Local Government Bond Act" in the first sentence, and inserted "general obligation" preceding "bond issue" in the second sentence.

Article 27.

Regional Transportation Authority.

§ 160A-635. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction. The chair of the Metropolitan Planning Organization may appoint the Chair of the Transportation Advisory Committee, or a designee approved by the Transportation Advisory Committee, as his or her designee.

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission.

(b) The members appointed by the Secretary of Transportation shall serve at the pleasure of the Secretary.

(c) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-634.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority. (1997-393, s. 1; 1999-445, s. 2; 2004-203, s. 56.)

Effect of Amendments. — Session Laws 2004-203, s. 56, effective August 17, 2004, added the last sentence of subdivision (a)(3).

Chapter 161.

Register of Deeds.

Article 2.
The Duties.

Sec.
161-31. Tax certification.

Article 2.

The Duties.

§ 161-31. Tax certification.

(a) Tax Certification. — The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. — If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: _____ _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. — This section applies only to Alleghany, Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Rockingham, Rowan, Rutherford, Stanly, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties. (2001-464, s. 1; 2001-513, s. 14; 2002-51, s. 1; 2003-72, s. 1; 2003-189, s. 6; 2003-354, s. 3; 2004-65, s. 1.)

Effect of Amendments. —

Session Laws 2004-65, s. 1, effective July 8, 2004, added the following counties in subsection (b), Edgecombe, Halifax, Lenoir, Nash, Pender and Wilson.

Chapter 162.

Sheriff.

Article 4.

County Prisoners.

§ 162-55. Injury to prisoner by jailer.

CASE NOTES

Evidence Sufficient for Jury. — Dismissal of a claim was not warranted where a plaintiff sufficiently alleged that defendants were deliberately indifferent a pretrial detainee's rights to receive adequate medical care following a head injury incurred while in jail, which resulted in the pretrial detainee suffering severe and permanent brain damage; plaintiff alleged that defendants knew or should have known of the explicit instructions not to permit the pretrial detainee to go to sleep, and an order from the emergency physician to transport the pretrial detainee to the hospital. Layman v. Alexander, 294 F. Supp. 2d 784, 2003 U.S. Dist. LEXIS 22056 (W.D.N.C. 2003).

Chapter 162A.

Water and Sewer Systems.

Article 1.

Water and Sewer Authorities.

Sec.
162A-6. Powers of authority generally.

Article 1.

Water and Sewer Authorities.

§ 162A-2. Definitions.

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

§ 162A-6. Powers of authority generally.

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority is authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction,

reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the

property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority, to adopt ordinances concerning stormwater management programs designed to protect water quality by controlling the level of pollutants in and the quantity and flow of stormwater, and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Budget Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make

payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional, and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subsection.

(c) In addition to the powers given under subsection (a) of this section, an authority that holds a certificate issued after December 1, 1991, by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

(1) To relocate a road or to construct a road necessitated by construction of water supply project.

(2) To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(3) To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or to improve drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156 of the General Statutes.

(4) To acquire property for wetlands mitigation. (1955, c. 1195, s. 6; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 804; 1983, c. 525, s. 5; c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 981, s. 2; 1989, c. 517; 1993 (Reg. Sess., 1994), c. 696, s. 8.1; 1995, c. 509, s. 113; c. 511, s. 1; 1997-436, s. 1; 2000-70, s. 6; 2004-203, s. 5(n).)

Effect of Amendments. — Session Laws 2004-203, s. 5(n), effective August 17, 2004, substituted "Budget Officer" for "Planning Officer" in subdivision (a)(14d).

Article 3.

Regional Sewage Disposal Planning.

§ 162A-26. Title.

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

Article 5.

Metropolitan Sewerage Districts.

§ 162A-65. Definitions; description of boundaries.

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

§ 162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.

CASE NOTES

Sewer Service. — Trial court's judgment upholding an ordinance which the City of Asheville (North Carolina) passed to annex property was reversed because the court failed to recognize that the city's plan for providing services to the area it proposed to annex did not provide statutorily required sewer service. Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed, 357 N.C. 657, 589 S.E.2d 887 (2003).

Article 6.

County Water and Sewer Districts.

§ 162A-86. Formation of district; hearing.

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

Sec.
163-1. Time of regular elections and primaries.

SUBCHAPTER II. ELECTION OFFICERS.

Article 4.

County Boards of Elections.

163-34. Power of county board of elections to maintain order.
163-35. Director of elections to county board of elections; appointment; compensation; duties; dismissal.

Article 5.

Precinct Election Officials.

163-42.1. (Effective until June 1, 2005) Student election assistants.
163-42.1. (Effective June 1, 2005) Student election assistants.

SUBCHAPTER III. QUALIFYING TO VOTE.

Article 7A.

Registration of Voters.

163-82.4. Contents of application form.
163-82.6. Acceptance of application forms.
163-82.10. (Effective until June 1, 2005) Official record of voter registration.
163-82.10. (Effective June 1, 2005) Official record of voter registration.
163-82.10B. (Effective June 1, 2005) Confidentiality of date of birth.
163-82.13. (Effective until June 1, 2005) Access to statewide voter registration file.
163-82.13. (Effective June 1, 2005) Access to statewide voter registration file.

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Party Definition.

163-96. "Political party" defined; creation of new party.
163-97.1. Voters affiliated with expired political party.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

Article 10.

Primary Elections.

Sec.
163-112. (Effective for the 2004 primary election) Death of candidate before primary; vacancy in single office.
163-112. (Effective for elections other than the 2004 primary election) Death of candidate before primary; vacancy in single office.

Article 11.

Nomination by Petition.

163-122. Unaffiliated candidates nominated by petition.
163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

Article 12A.

Precinct Boundaries.

163-132.3. Alterations to approved precinct boundaries.
163-132.3A. Alterations to precinct names.

Article 14A.

Voting.

Part 3. Procedures at the voting place.

163-166.12. Requirements for certain voters who register by mail.

Article 18A.

Presidential Preference Primary Act.

163-213.5. Nomination by petition.
163-213.7. Voting in presidential preference primary; ballots.

SUBCHAPTER VII. ABSENTEE VOTING.

Article 21.

Military Absentee Registration and Voting in Primary and General Elections.

163-257. Facsimile, electronic mail, or scanned transmission of election materials.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

Article 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

Sec.
163-278.6. Definitions.
163-278.7. Appointment of political treasurers.
163-278.8. Detailed accounts to be kept by political treasurers.
163-278.12. Special reporting of contributions and independent expenditures.
163-278.12A. [Repealed.]
163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars.

Part 1A. Disclosure Requirements for Media Advertisements.

163-278.38Z. Definitions.
163-278.39B. [Recodified.]

Article 22B.

Appropriations from the North Carolina Political Parties Financing Fund.

163-278.41. Appropriations in general election years and other years.

Article 22D.

The North Carolina Public Campaign Financing Fund.

163-278.64. Requirements for participation; certification of candidates.

Article 22E.

Electioneering Communications.

Sec.
163-278.80. Definitions.
163-278.81. Disclosure of Electioneering Communications.
163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.
163-278.83. Penalties.

Article 22F.

Mass Mailings and Telephone Banks: Electioneering Communications.

163-278.90. Definitions.
163-278.91. Disclosure of Electioneering Communications.
163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.
163-278.93. Penalties.

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

Article 24.

Conduct of Municipal Elections.

163-296. Nomination by petition.
163-299. Ballots; municipal primaries and elections.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

(a) Unless otherwise provided by law, elections for the officers listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices, and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210.

(d) If primaries for the State Senate or State House of Representatives are temporarily moved from the date provided in subsection (b) of this section for any election year, all primaries shall be held on the same day.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	Superior Court District	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January after next election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
District Attorney	District Attorney district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917, c. 218; C.S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 782, s. 1; 1993 (Reg. Sess., 1994), c. 738, s. 2; 1996, 2nd Ex. Sess., c. 9, s. 2; 2003-434, 1st Ex. Sess., s. 6; 2004-127, s. 12.)

Editor's Note. —

Session Laws 2003-434, 1st Ex. Sess., s. 5.(a), provides: "If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(b), provides: "If the filing period or primary election or both for all offices are postponed under this section, the State Board of Elections may issue temporary orders pursuant to that postponement that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2004 primaries and general election for those offices. Those orders shall include a primary schedule and if necessary an altered schedule leading to the general election on November 2, 2004. The orders shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its orders, including a Revised Primary Timetable, to county boards of elections. Adoption of orders under this subsection is not subject to Chapter 150B of the General Statutes."

Session Laws 2003-434, s. 1st Ex. Sess., 5.(c), provides: "The State Board of Elections shall be governed by the following limitations:

"(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-37) and the filing period for those offices.

"(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

"(3) The State Board shall set a filing period no shorter than 10 business days.

"(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(d), provides: "If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office at the next meeting of the board of education after the certification of the election."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(f), provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

Effect of Amendments. — Session Laws 2003-434, 1st Ex. Sess., s. 6, effective November 25, 2003, and applicable to any case pending on or after that date, to any case regardless of when the case was filed, and and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts, added subsection (d).

Session Laws 2004-127, s. 12, effective July 26, 2004, added "and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter" at the end of subsection (b).

SUBCHAPTER II. ELECTION OFFICERS.

ARTICLE 4.

County Boards of Elections.

§ 163-34. Power of county board of elections to maintain order.

Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C.S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1; 2004-203, s. 57.)

Effect of Amendments. — Session Laws 2004-203, s. 57, effective August 17, 2004, deleted "or constable" following "sheriff" two times in the third sentence.

§ 163-35. Director of elections to county board of elections; appointment; compensation; duties; dismissal.

(a) In the event a vacancy occurs in the office of county director of elections in any of the county boards of elections in this State, the county board of elections shall submit the name of the person it recommends to fill the vacancy, in accordance with provisions specified in this section, to the Executive Director of the State Board of Elections who shall issue a letter of appointment. A person shall not serve as a director of elections if he:

(1) Holds any elective public office;
(2) Is a candidate for any office in a primary or election;
(3) Holds any office in a political party or committee thereof;
(4) Is a campaign chairman or finance chairman for any candidate for public office or serves on any campaign committee for any candidate;
(5) Has been convicted of a felony in any court unless his rights of citizenship have been restored pursuant to the provisions of Chapter 13 of the General Statutes of North Carolina;
(6) Has been removed at any time by the State Board of Elections following a public hearing; or
(7) Is a member or a spouse, child, spouse of child, parent, sister, or brother of a member of the county board of elections by whom he would be employed.

(b) Appointment, Duties; Termination. — Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections

is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order

to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection.

(c) Compensation of Directors of Elections. — Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of twelve dollars ($12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least twelve dollars ($12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken.

(d) Duties. — The director of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition, the director of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its director of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a director of elections any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections the acts of a properly appointed director of elections shall be deemed to be the acts of the county board of elections, its officers and members.

(e) Training and Certification. — The State Board of Elections shall conduct a training program consisting of four weeks for each new county director of elections. The director shall complete that program. Each director appointed after May 1995 shall successfully complete a certification program as provided

in G.S. 163-82.24(b) within three years after appointment or by January 1, 2003, whichever occurs later. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 2; 1973, c. 859, s. 1; 1975, c. 211, ss. 1, 2; c. 713; 1977, c. 265, s. 21; c. 626, s. 1; c. 1129, s. 1; 1981, cc. 84, 221; 1983, c. 697; 1985, c. 763; 1991, c. 338, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 16; 1995, c. 243, s. 1; 1999-426, s. 7(a); 2001-319, ss. 1(a), 1(b), 11; 2004-203, s. 58.)

Effect of Amendments. — Session Laws 2004-203, s. 58, effective August 17, 2004, in the second paragraph of subsection (b), inserted the eighth and ninth sentences, substituted "after the hearing" for "by the State Board of Elections," substituted "after the hearing" for "by the board," and added "or its designated member(s)" following "Elections"; in the second paragraph of subsection (b), inserted the fourth sentence, and substituted the last sentence for the former last sentence which read: "The State Board of Elections shall notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings."; and deleted the last sentence of the last paragraph which read: "For the purposes of this subsection, the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23."

Article 5.

Precinct Election Officials.

§ 163-42.1. (Effective until June 1, 2005) Student election assistants.

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appointed as a student election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.
(2) Be a resident of the county in which the student is appointed.
(3) Be enrolled in a secondary educational institution, including a home school as defined in G.S. 115C-563(a), with an exemplary academic record as determined by that institution.
(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.
(5) Have the consent of a parent, legal custodian, or guardian.

The county board of elections may appoint student election assistants, following guidelines which shall be issued by the State Board of Elections. No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as a precinct assistant, shall be sworn in the same manner as a precinct assistant, and shall be compensated in the same manner as precinct assistants. The county board of elections shall prescribe the duties of a student election assistant, following guidelines which shall be issued by the State Board of Elections. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election. (2003-278, s. 1.)

Section Set Out Twice. — The section above is effective until June 1, 2005. For the section as amended June 1, 2005, see the following section, also numbered G.S. 163-42.1.

G.S. 163-42.1 is set out twice. See notes.

§ 163-42.1. (Effective June 1, 2005) Student election assistants.

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appointed as a student election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.

(2) Be a resident of the county in which the student is appointed.

(3) Be enrolled in a secondary educational institution, including a home school as defined in G.S. 115C-563(a), with an exemplary academic record as determined by that institution.

(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.

(5) Have the consent of a parent, legal custodian, or guardian.

The county board of elections may appoint student election assistants, following guidelines which shall be issued by the State Board of Elections. No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as a precinct assistant, shall be sworn in the same manner as a precinct assistant, and shall be compensated in the same manner as precinct assistants. The county board of elections shall prescribe the duties of a student election assistant, following guidelines which shall be issued by the State Board of Elections. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election. The date of birth of a student election assistant shall be kept confidential. (2003-278, s. 1; 2004-127, s. 17(e).)

Section Set Out Twice. — The section above is effective June 1, 2005. For the section as in effect until June 1, 2005, see the preceding section, also numbered G.S. 163-42.1.

Effect of Amendments. — Session Laws 2004-127, s. 17.(e), effective June 1, 2005, added the last sentence to the paragraph following subdivision (5).

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 7A.

Registration of Voters.

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. — The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,

(2) Date of birth,

(3) Residence address,

(4) County of residence,

(5) Date of application,

(6) Gender,

(7) Race,

(7a) Ethnicity,

(8) Political party affiliation, if any, in accordance with subsection (c) of this section,

(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. — The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. — The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. — Voter registration application forms shall include all of the following:

(1) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

If the voter fails to answer the question set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-424, s. 7(c), (d); 1999-453, s. 8(a); 2003-226, s. 9; 2004-127, s. 4.)

Effect of Amendments. — Session Laws 2004-127, s. 4, effective July 26, 2004, substituted "163-275(13)" for "163-275(4)" at the end of subdivision (b)(1).

§ 163-82.6. Acceptance of application forms.

(a) How the Form May Be Submitted. — The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(b) Signature. — The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used.

(c) Registration Deadlines for an Election. — In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election, except as provided in subsection (d) of this section.

(c1) If the application is submitted by facsimile transmission or transmission of a scanned document, a permanent copy of the completed, signed form shall be delivered to the county board no later than 20 days before the election.

(d) Instances When Person May Register and Vote on Election Day. — If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss., 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s., 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1; 1997-456, s. 27; 1999-426, s. 1(a), (b); 2001-315, s. 1; 2001-319, s. 6(a); 2003-226, s. 4; 2004-127, s. 9(a).)

Effect of Amendments. —

Session Laws 2004-127, s. 9.(a), effective July 26, 2004, inserted "transmission of a scanned document," in the first sentence of subsection (a); in subdivision (c)(2), inserted "or by transmission of a scanned document" and made a related change; inserted "or transmission of a scanned document" in subsection (c1); and made minor punctuation changes throughout.

§ 163-82.10. (Effective until June 1, 2005) Official record of voter registration.

(a) Official Record. — The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure.

(a1) Paperless, Instant Electronic Transfer. — The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

(2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age or date of birth or both, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic

G.S. 163-82.10 is set out twice. See notes.

medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — Free lists of all registered voters in the county shall be provided in the following cases:

(1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:
   a. The State chair of each political party; and
   b. The county chair of each political party
   once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, "political party" means a political party as defined in G.S. 163-96.

(d) Exception for Address of Certain Registered Voters. — Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of

G.S. 163-82.10 is set out twice. See notes.

a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 31/2; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12; c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995 (Reg. Sess., 1996), c. 688, s. 2; 2001-396, s. 1; 2002-171, s. 8; 2003-226, ss. 2, 3; 2003-278, s. 6.)

Section Set Out Twice. — The section above is effective until June 1, 2005. For the section as amended June 1, 2005, see the following section, also numbered G.S. 163-82.10.

§ 163-82.10. (Effective June 1, 2005) Official record of voter registration.

(a) Official Record. — The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, dates of birth, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers or dates of birth in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers or dates of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure.

(a1) Paperless, Instant Electronic Transfer. — The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall consist of nine

G.S. 163-82.10 is set out twice. See notes.

track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

(2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — Free lists of all registered voters in the county shall be provided in the following cases:

(1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:
   a. The State chair of each political party; and
   b. The county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, "political party" means a political party as defined in G.S. 163-96.

(d) Exception for Address of Certain Registered Voters. — Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program

G.S. 163-82.10 is set out twice. See notes.

authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 31/2; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12;c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s.1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995 (Reg. Sess., 1996), c. 688, s. 2; 2001-396, s. 1; 2002-171, s. 8; 2003-226, ss. 2, 3; 2003-278, s. 6; 2004-127, s. 17(c).)

Section Set Out Twice. — The section above is effective June 1, 2005. For the section as in effect until June 1, 2005, see the preceding section, also numbered G.S. 163-82.10.

Effect of Amendments. — Session Laws 2004-127, s. 17.(c), effective June 1, 2005, in subsection (a), inserted "dates of birth" in the third, fourth and fifth sentences; added the third and fourth sentences in subsection (b); in subdivision (b)(2), substituted "but not" for "or," and deleted "or both" after "birth,"; and inserted "age but not" after "gender," in the paragraph following subdivision (c)(2).

§ 163-82.10B. (Effective June 1, 2005) Confidentiality of date of birth.

Boards of elections shall keep confidential the date of birth of every voter-registration applicant and registered voter, except in the following situations:

(1) When a voter has filed notice of candidacy for elective office under G.S. 163-106, 163-122, 163-123, or 163-294.2, or 163-323, has been nominated as a candidate under G.S. 163-98 or G.S. 163-114, or has otherwise formally become a candidate for elective office. The exception of this subdivision does not extend to an individual who meets the definition of "candidate" only by beginning a tentative candidacy by receiving funds or making payments or giving consent to someone else to receive funds or transfer something of value for the purpose of exploring a candidacy.

(2) When a voter is serving in an elective office.
(3) When a voter has been challenged pursuant to Article 8 of this Chapter.
(4) When a voter-registration applicant or registered voter expressly authorizes in writing the disclosure of that individual's date of birth.

The disclosure of an individual's age does not constitute disclosure of date of birth in violation of this section.

The county board of elections shall give precinct officials access to a voter's date of birth where necessary for election administration, consistent with the duty to keep dates of birth confidential.

Disclosure of a date of birth in violation of this section shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of a date of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. (2004-127, s. 17(a).)

Editor's Note. — Session Laws 2004-127, s. 17.(f), makes this section effective June 1, 2005.

§ 163-82.13. (Effective until June 1, 2005) Access to statewide voter registration file.

(a) Free Copy for Political Parties. — Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163-96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, date of birth, race, voting history, political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) Copies for Sale to Others. — Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

Section Set Out Twice. — The section above is effective until June 1, 2005. For the section as in effect June 1, 2005, see the following section, also numbered G.S. 163-82.13.

§ 163-82.13. (Effective June 1, 2005) Access to statewide voter registration file.

(a) Free Copy for Political Parties. — Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163-96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, age but not date of birth, race, voting history,

G.S. 163-82.13 is set out twice. See notes.

political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) Copies for Sale to Others. — Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, age but not date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2004-127, s. 17(d).)

Section Set Out Twice. — The section above is effective June 1, 2005. For the section as in effect until June 1, 2005, see the preceding section, also numbered G.S. 163-82.13.

Effect of Amendments. — Session Laws 2004-127, s. 17(d), effective June 1, 2005, inserted "age but not" preceding "date of birth" in subsections (a) and (b).

§ 163-82.28. The HAVA Election Fund.

Editor's Note. —

Session Laws 2003-284, s. 25.1(a), as amended by Session Laws 2004-124, s. 26.1, provides appropriations to this fund, while s. 25.1(b), as amended by Session Laws 2004-124, s. 26.1, explains the matching grant program and maintenance of effort requirements under Title II of the Help America Vote Act (P.L. 107-252).

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 contains a severability clause.

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. — A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congres-

sional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. — Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED _____ AND WHOSE STATE CHAIRMAN IS _____, RESIDING AT _____ AND WHO CAN BE REACHED BY TELEPHONE AT _____."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented.

(c) Repealed by Session Laws 1983, c. 576, s. 3. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3; 1983, c. 576, ss. 1-3; 1997-456, s. 27; 1999-424, s. 5(a); 2004-127, s. 14.)

Effect of Amendments. — Session Laws 2004-127, s. 14, effective July 26, 2004, deleted "THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION" at the end of the first paragraph in subsection (b).

§ 163-97.1. Voters affiliated with expired political party.

The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated designation" by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163-82.17. (1975, c. 789; 1977, c. 408, s. 1; 2004-127, s. 10.)

Effect of Amendments. — Session Laws 2004-127, s. 10, effective July 26, 2004, substituted "163-82.17" for "163-74(b)" at the end of the last sentence.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

Editor's Note. —

Session Laws 2003-434, 1st Ex. Sess., s. 5.(a), provides: "If by 10:00 A.M. on February 9, 2004, an act to redistrict the State House of Representatives or the State Senate has not been approved under section 5 of the Voting Rights Act of 1965 or is otherwise prohibited by law from being implemented, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(b), provides: "If the filing period or primary election or both for all offices are postponed under this section, the State Board of Elections may issue temporary orders pursuant to that postponement that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2004 primaries and general election for those offices. Those orders shall include a primary schedule and if necessary an altered schedule leading to the general election on November 2, 2004. The orders shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its orders, including a Revised Primary Timetable, to county boards of elections. Adoption of orders under this subsection is not subject to Chapter 150B of the General Statutes."

Session Laws 2003-434, s. 1st Ex. Sess., 5.(c), provides: "The State Board of Elections shall be governed by the following limitations:

"(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The postponement shall also apply to any elections to local office held on that date (such as elections for boards of education under G.S. 115C-

37) and the filing period for those offices.

"(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163-111.

"(3) The State Board shall set a filing period no shorter than 10 business days.

"(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tempore of the Senate, the Speakers of the House of Representatives, and the leaders of both political parties in the House and Senate."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(d), provides: "If the primary election is postponed under subsection (a) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2004 election only to provide that the persons elected shall take office at the next meeting of the board of education after the certification of the election."

Session Laws 2003-434, 1st Ex. Sess., s. 5.(f), provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

§ 163-111. Determination of primary results; second primaries.

Local Modification. — Lenoir: 1989, c. 291, s. 7(a); Montgomery: 2004-59, s. 11 (effective January 1, 2006); Pamlico: 1987 (Reg. Sess., 1988), c. 939, s. 5; Richmond: 1989, c. 88, s. 1.1; city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 5; Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 3, 4.

§ 163-112. (Effective for the 2004 primary election) Death of candidate before primary; vacancy in single office.

(a) Death of One of Two Candidates within 10 Days after the Filing Period Closes. — If at the time the filing period closes, only two persons have filed notice of candidacy for nomination by a political party to a single office, and one of the candidates dies within 10 days after the filing period closes, then the proper board of elections shall, upon notice of the death, reopen the filing period for that party contest, for an additional three days. Should no candidate file during the three days, the board of elections shall certify the remaining candidate as the nominee of his party as provided in G.S. 163-110.

(b) Death of One of More Than Two Candidates within 10 Days after the Filing Period Closes. — If at the close of the filing period more than two candidates have filed for a single-seat office, and within 10 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 10 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office.

(c) Vacancy in Group Offices within 10 Days after the Filing Period Closes. — If at the time the filing period closes more persons have filed notice of candidacy for nomination by a political party to an office constituting a group than there are positions to be filled, and a candidate or candidates die within 10 days after the filing period closes, and there remains only the number of candidates equal to or fewer than the number of positions to be filled, the

G.S. 163-112 is set out twice. See notes.

appropriate board of elections shall reopen the filing period for that party contest, for three days for that office. Should no persons file during the three-day period, then those candidates already filed shall be certified as the party nominees for that office.

(d) Vacancy in Group Offices More Than 10 Days after the Filing Period Closes. — In the event a candidate or candidates death occurs more than 10 days after the original filing period closes for an office constituting a group, then regardless of the number of candidates filed for nomination, the board of elections shall be governed as follows:

(1) If the ballots have not been printed at the time the board of elections receives notice of the death, the deceased candidate's name shall not be printed on the ballot.

(2) If the ballots have been printed at the time the board of elections receives notice of the death, the ballots shall not be reprinted but votes cast for the deceased candidate shall not be counted for any purpose.

(3) In the event the death of a candidate or candidates results in the number of candidates being equal to or less than the number of positions to be filled for that office, then the remaining candidates shall be certified as the party nominees for that office and no primary shall be held for that office.

(4) If death or disqualification of candidates results in the number of candidates being less than the number of positions to be filled for that office, then the appropriate party executive committee shall, in accordance with G.S. 163-114, make nominations of persons equal to the number of positions to be filled and no primary shall be held and those names shall be printed on the general election ballot. (1959, c. 1054; 1967, c. 775, s. 1; 1981, c. 434; 1993, c. 553, s. 60; 2001-466, s. 1(f); 2003-278, s. 4; 2003-434, 1st Ex. Sess., s. 5(e); 2004-127, s. 13.)

Section Set Out Twice. — The section above is effective for the 2004 primary election only. For the section as in effect for elections other than the 2004 primary election, see the following section, also numbered G.S. 163-112.

Editor's Note. —

Session Laws 2003-434, 1st Ex. Sess., s. 5(f) provides: "The provisions of this section apply during the 2004 election year only."

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

Amendment Effective for 2004 Primary Election Only. — Session Laws 2003-434, 1st Ex. Sess., s. 5.(e), effective for the 2004 primary election only, substituted "10 days" for "30 days" wherever it appeared throughout the section.

Effect of amendments. — Session Laws 2004-127, s. 13, effective July 26, 2004, deleted "registration" following "death" in sudivision (d)(4).

§ 163-112. (Effective for elections other than the 2004 primary election) Death of candidate before primary; vacancy in single office.

(a) Death of One of Two Candidates within 30 Days after the Filing Period Closes. — If at the time the filing period closes, only two persons have filed notice of candidacy for nomination by a political party to a single office, and one of the candidates dies within 30 days after the filing period closes, then the proper board of elections shall, upon notice of the death, reopen the filing period for that party contest, for an additional three days. Should no candidate file during the three days, the board of elections shall certify the remaining candidate as the nominee of his party as provided in G.S. 163-110.

G.S. 163-112 is set out twice. See notes.

(b) Death of One of More Than Two Candidates within 30 Days after the Filing Period Closes. — If at the close of the filing period more than two candidates have filed for a single-seat office, and within 30 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 30 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office.

(c) Vacancy in Group Offices within 30 Days after the Filing Period Closes. — If at the time the filing period closes more persons have filed notice of candidacy for nomination by a political party to an office constituting a group than there are positions to be filled, and a candidate or candidates die within 30 days after the filing period closes, and there remains only the number of candidates equal to or fewer than the number of positions to be filled, the appropriate board of elections shall reopen the filing period for that party contest, for three days for that office. Should no persons file during the three-day period, then those candidates already filed shall be certified as the party nominees for that office.

(d) Vacancy in Group Offices More Than 30 Days after the Filing Period Closes. — In the event a candidate or candidates death occurs more than 30 days after the original filing period closes for an office constituting a group, then regardless of the number of candidates filed for nomination, the board of elections shall be governed as follows:

(1) If the ballots have not been printed at the time the board of elections receives notice of the death, the deceased candidate's name shall not be printed on the ballot.

(2) If the ballots have been printed at the time the board of elections receives notice of the death, the ballots shall not be reprinted but votes cast for the deceased candidate shall not be counted for any purpose.

(3) In the event the death of a candidate or candidates results in the number of candidates being equal to or less than the number of positions to be filled for that office, then the remaining candidates shall be certified as the party nominees for that office and no primary shall be held for that office.

(4) If death or disqualification of candidates results in the number of candidates being less than the number of positions to be filled for that office, then the appropriate party executive committee shall, in accordance with G.S. 163-114, make nominations of persons equal to the number of positions to be filled and no primary shall be held and those names shall be printed on the general election ballot. (1959, c. 1054; 1967, c. 775, s. 1; 1981, c. 434; 1993, c. 553, s. 60; 2001-466, s. 1(f); 2003-278, s. 4; 2003-434, 1st Ex. Sess., s. 5(e); 2004-127, s. 13.)

Section Set Out Twice. — The section above is effective for elections other than the 2004 primary election. For the section as in effect for the 2004 primary election only, see the preceding section, also numbered G.S. 163-112.

Editor's Note. — This version of G.S. 163-112 has been set out in this supplement to correct errors appearing in the main volume.

Session Laws 2003-434, 1st Ex. Sess., s. 5(f) provides: "The provisions of this section apply

during the 2004 election year only."

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

Effect of amendments. — Session Laws 2004-127, s. 13, effective July 26, 2004, deleted "registration" following "death" in sudivision (d)(4).

Article 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before

12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF _____ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) This section does not apply to elections under Article 25 of this Chapter. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14; 1999-424, s. 5(b); 2002-159, s. 21(b); 2004-127, s. 8(a).)

Effect of Amendments. —

Session Laws 2004-127, s. 8(a), effective July 26, 2004, in the second sentence of subdivision (a)(1) and (a)(3), substituted "voter registration records of" for "most recent statistical report issued by"; in the second sentence of subdivisions (a)(1), (a)(2) and (a)(3) inserted "as of January 1 of the year in which the general election is to be held"; in the second sentence of subdivision (a)(2), substituted "voter registration records of" for "latest statistical report issued by"; insubdivision (a)(3), substituted "voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held" for "most recent figures certified by the State Board of Elections" at the end of the second sentence.

CASE NOTES

Justiciability of Candidate's Challenges to Filing Deadline and Petition Requirements. — Challenge to the filing deadline under G.S. 163-122 as applied, based on the extension of the deadline due to the postponement of a statewide primary, was denied as non-justiciable because a candidate and his supporters did not suffer an actual injury and there was no live controversy; however, a challenge to the statute's petition strictures was justiciable as meeting the "capable of repetition, yet evading review" exception to mootness, but the evidence on the record was not sufficient to examine the question on summary judgment. Delaney v. Bartlett, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 24059 (M.D.N.C. Dec. 24, 2003).

§ 163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

(a) Procedure for Qualifying as a Write-In Candidate. — Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent. — The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

(1) Applicant's name,
(2) Applicant's residential address,
(3) Declaration of applicant's intent to be a write-in candidate,
(4) Title of the office sought,
(5) Date of the election,
(6) Date of the declaration,
(7) Applicant's signature.

(c) Petitions for Write-in Candidacy. — An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.
(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be

filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition. — Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123."

(e) Defeated Primary Candidate. — No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. — If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-182.1, and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(g) Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for elections under Article 25 of this Chapter. (1987, c. 393, ss. 1; 2; 1989, c. 92, s. 1; 1999-424, s. 5(c); 2001-319, s. 9(a); 2001-398, s. 7; 2001-403, s. 12; 2002-158, s. 13; 2004-127, s. 7.)

Editor's Note. —
This section was amended by Session Laws 2002-158, s. 13, in the coded bill drafting format provided by G.S. 120-20.1. The words "and district court judge" were part of subsection (g) as it existed prior to the 2002 amendment and were not addressed by Session Laws 2002-158, but were subsequently deleted by Session Laws 2004-127, s. 7.

Effect of Amendments. —
Session Laws 2004-127, s. 7, effective July 26, 2004, deleted "and district court judge" preceding "elections under" in subsection (g).

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12A.

Precinct Boundaries.

§ 163-132.3. Alterations to approved precinct boundaries.

(a) No county board of elections may change any precinct boundary except in one of the following ways:

(1) By dividing an existing precinct into one or more new precincts, without involving other existing precincts. The lines on which the precincts are divided shall follow census blocks established under the latest U.S. Census.

(2) By combining one or more existing precincts into a new precinct. If one or more precincts are combined into a single precinct, the new precinct shall not be divided until at least four years after the effective date of the combination.

(3) By moving a precinct boundary that does not follow a census block boundary established under the latest U.S. Census so that that precinct boundary does follow such a census block boundary.

All proposed new precincts shall consist solely of contiguous territory.

This section does not prohibit a county from continuing to use precincts that were allowed under the Combined Reporting Unit provisions of G.S. 163-132.1(c)(6).

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or on other maps or electronic databases approved by the Executive Director the new boundaries of these precincts. The Executive Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this section.

(b) The Executive Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this

section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

(d) Repealed by Session Laws 2004-127, s. 1(a), effective August 15, 2004, and applicable to precincts established or changed on or after that date.

(e) During the period beginning October 1, 2002, and ending August 15, 2004, no county board of elections may change any precinct boundary. However, a county that has a precinct line that does not follow a 2000 Census Block Boundary may change that precinct line to conform to the way that precinct is shown on the General Assembly's redistricting database, provided the total population of the area moved from one precinct to another is not greater than ten percent (10%) of the total population of either precinct. A county board of elections proposing a change to a precinct during this period shall submit that change to the Legislative Services Office, which shall examine the proposed change and give its opinion of its compliance with this subsection to the Executive Director of the State Board of Elections. If the proposed change is in compliance with this subsection, the Executive Director shall approve it. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1993, c. 352, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 71; 1995, c. 423, ss. 2, 3; 1999-227, ss. 1, 2; 2001-319, ss. 10.1, 11; 2001-487, s. 96; 2002-159, s. 56; 2003-434, 1st Ex. Sess., s. 13; 2004-127, s. 1(a).)

Editor's Note. —

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

Session Laws 2004-127, s. 1.(c), provides in part that any changes to precincts proposed for the 2004 election shall be completed by September 17, 2004.

Effect of Amendments. —

Session Laws 2003-434, 1st Ex. Sess., s. 13, effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts, substituted "2004" for "2003" in the first sentence of subsection (e).

Session Laws 2004-127, s. 1.(a), effective August 15, 2004, and applicable to precincts established or changed on or after that date, rewrote subsection (a); repealed subsection (d), related to Census block boundaries; and substituted "August 15" for "December 31" in subsection (e).

§ 163-132.3A. Alterations to precinct names.

No county board of elections shall assign to any precinct a name that has been used after January 1, 1999, for a precinct comprising different territory. That requirement does not apply to a precinct change made under G.S. 163-132.3(a)(3). The county board of elections shall submit to the Executive Director of the State Board of Elections for approval every proposed change to a precinct name, and the Executive Director shall approve a name change only if it complies with this section. (2004-127, s. 1(b).)

Editor's Note. — Session Laws 2004-127, s. 1(c), made this section effective August 15, 2004, and applicable to precincts established or changed on or after that date.

Session Laws 2004-127, s. 1(c), further provided that any changes to precincts proposed for the 2004 election shall be completed by September 17, 2004.

Article 14A.

Voting.

Part 1. Definitions.

§ 163-165. Definitions.

Voter Paper Trail Study. — Session Laws 2004-161, ss. 12.1 through 12.4, created the Electronic Voting Systems Study Comission. Session Laws 2004-161, s. 12.2, provides: "The Electronic Voting Systems Study Commission shall study the issue of whether direct record electronic (DRE) voting systems should be prohibited in North Carolina unless each unit of the system produces a voter-verifiable paper record that is suitable for a recount or a manual audit and that is equivalent or superior to the paper record produced by a paper ballot system."

"In conducting the study, the Commission shall consider DRE voting systems, compliance with the Help America Vote Act of 2002 (HAVA) and with voting-systems standards to be adopted under HAVA, including providing sufficient opportunity for access and participation, and privacy and independence, to all voters regardless of disability. The Commission shall consider any other issue related to the use of electronic voting systems. The Commission shall make a final report to the 2005 General Assembly upon its convening. The report shall contain the Commission's findings and recommendations. The Commission shall terminate on the earlier of the filing of its final report or the convening of the 2005 General Assembly."

Part 3. Procedures at the voting place.

§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(c) The Right to Vote Provisionally. — If an individual is required under subsection (a) or (b) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. — This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law. (2003-226, s. 16; 2004-127, s. 3.)

Effect of Amendments. — Session Laws 2004-127, s. 3, effective July 26, 2004, inserted the subsection (b1) designation; inserted "under the provisions of subsection (a) or (b) of this section" in the first sentence of subsection (b1); and deleted the undesignated paragraph following subsection (b1), relating to persons entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act.

Article 18A.

Presidential Preference Primary Act.

§ 163-213.5. Nomination by petition.

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the Monday prior to the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96 as they relate to the chairman of the county board of elections.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to

the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections. (1971, c. 225; 1975, c. 744; 2002-159, s. 55(e); 2003-278, s. 9(b); 2004-127, s. 6.)

Effect of Amendments. — Session Laws 2004-127, s. 6, effective July 26, 2004, substituted "163-96" for "163-96(b)(1) and (2)" in the last sentence of the second paragraph.

§ 163-213.7. Voting in presidential preference primary; ballots.

The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an "uncommitted" or "no preference" status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an "uncommitted" or "no preference" status, but shall not be permitted to vote for candidates or "uncommitted" status of a political party different from his registration. Persons registered as "Unaffiliated" shall not participate in the presidential primary except as provided in G.S. 163-119. (1971, c. 225; 1975, c. 744; 1993 (Reg. Sess., 1994), c. 762, s. 52; 2004-127, s. 11.)

Effect of Amendments. — Session Laws 2004-127, s. 11, effective July 26, 2004, substituted "163-119" for "163-116" at the end of the last sentence.

SUBCHAPTER VII. ABSENTEE VOTING.

ARTICLE 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ 163-257. Facsimile, electronic mail, or scanned transmission of election materials.

An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by facsimile, electronic mail, or transmission of a scanned document if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive absentee ballot applications and accept voted ballots by facsimile, electronic mail, or transmission of a scanned document from eligible electors as defined in G.S. 163-245. The State Board of Elections shall promulgate uniform rules for the use of facsimiles, electronic mail, and transmission of scanned documents in application and voting under this section, and all county boards of elections shall adhere to those rules. (1999-455, s. 20; 2004-127, s. 9(b).)

Effect of Amendments. — Session Laws 2004-127, s. 9(b), effective July 26, 2004, inserted "or scanned" and made a related change in the heading; in the first, second and third sentences, inserted "transmission of a scanned document" and made related changes.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-278. Duty of investigating and prosecuting violations of this Article.

Editor's Note. — Session Laws 2004-127, s. 15, effective July 26, 2004, attempted to amend G.S. 163-278(9). There is no subdivision (9) in this section and the intended reference was to G.S. 163-278.6. At the direction of the Revisor of Statutes the amendment was not given effect.

ARTICLE 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.5. Scope of Article; severability.

CASE NOTES

Constitutionality. — Because the monetary trigger contained in G.S. 163-278.6(14) fails to account for the overall activities of an entity and may be used as evidence of an entity's major purpose, it is unconstitutionally overbroad, however, any presumption in this context is not per se unconstitutional as this holding is limited to the major purpose presumption based entirely on a monetary standard completely untethered from the other factors identified by the United States Supreme Court in determining major purposes. The portion of G.S. 163-278.6(14) relating to the major purpose presumption is therefore substantially overbroad and invalid; however, the remaining portions of G.S. 163278.6(14) can be severed and given effect without the invalid portion. G.S. 163-278.5. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.6. Definitions.

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation doing business in this State under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that

supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under

the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3; 1997-515, ss. 4(a)-(c), 7(b)-(d); 1999-31, ss. 1(a), (b), 2(a)-(c), 3, 4(a); 1999-424, s. 6(a), (b); 2002-159, s. 55(n); 2003-278, s. 5; 2004-125, s. 3; 2004-203, s. 12(b).)

Editor's Note. —

Session Laws 2004-127, s. 15, incorrectly identified G.S. 163-278(9) as the section amended. Evidently the intended reference was to G.S. 163-278.6(9). If the intended amendment had been given effect, subdivision (9) would read: "(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

Session Laws 2004-125, s. 6, is a severability clause.

Effect of Amendments. —

Session Laws 2004-125, s. 3, effective July 20, 2004, except that any criminal penalty resulting from this act becomes effective Octo-

ber 1, 2004, added "If" at the end of the opening paragraph of subdivision (6), and added subdivisions (6)a. and (6)b.

Session Laws 2004-203, s. 12(b), effective August 17, 2004, added the last sentences in subdivisions (2), (4), and (5); added the last paragraph in subdivision (14); and added the last sentence in subdivision (15).

CASE NOTES

Constitutionality. —

Because the monetary trigger contained in G.S. 163-278.6(14) fails to account for the overall activities of an entity and may be used as evidence of an entity's major purpose, it is unconstitutionally overbroad, however, any presumption in this context is not per se unconstitutional as this holding is limited to the major purpose presumption based entirely on a monetary standard completely untethered from the other factors identified by the United States Supreme Court in determining major purposes. The portion of G.S. 163-278.6(14) relating to the major purpose presumption is therefore substantially overbroad and invalid; however, the remaining portions of G.S. 163278.6(14) can be severed and given effect without the invalid portion. G.S. 163-278.5. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.7. Appointment of political treasurers.

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. — When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the

numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20; 1987, c. 113, s. 1; 1995, c. 315, s. 1; 2002-159, s. 57.1(a); 2004-203, s. 59(a).)

Effect of Amendments. — Session Laws 2004-203, s. 59.(a), effective January 1, 2003, inserted "filed after March 1, 2003, and" preceding "required by this Article" in subdivision (b)(7).

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.8. Detailed accounts to be kept by political treasurers.

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars ($100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars ($100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars ($100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars ($100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars ($100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars ($100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.

(e) All expenditures for media expenses shall be made by check only. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by check only. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers. (1973, c. 1272, s. 1; 1977, c. 635, s. 1; 1979, c. 1073, ss. 16, 20; 1981, c. 814, s. 1; 1985, c. 353, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 744, s. 1; 1999-424, s. 7(m); 2004-125, s. 5(a).)

Editor's Note. — Session Laws 2004-125, s. 6, is a severability clause.

Effect of Amendments. — Session Laws 2004-125, s. 5.(a), effective July 20, 2004, and applicable to any contribution made on or after January 1, 2003, repealed subsection (c), relating to treasurer's acceptance of contributions.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.9. Statements filed with Board.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.12. Special reporting of contributions and independent expenditures.

(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution.

(d) Contributions or expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or expenditures affect, whichever occurs earlier. (1973, c. 1272, s. 1; 1979, c. 107, s. 15; c. 1073, s. 20; 1999-31, s. 2(d); 2004-127, s. 16.)

Editor's Note. — Session Laws 2004-125, s. 6, is a severability clause.

Effect of Amendments. — Session Laws 2004-127, s. 16, effective July 26, 2004, substituted "163-278.39" for "163-278.16(f)" in subsection (a).

§ 163-278.12A: Repealed by Session Laws 2004-125, s. 4, effective July 20, 2004.

Editor's Note. — Session Laws 2004-125, s. 6, is a severability clause.

§ 163-278.13. Limitation on contributions.

CASE NOTES

Constitutionality. — Four thousand dollar limitation on contributions to "independent expenditure political action committees" under G.S. 163-278.13, is substantially overbroad and unconstitutional. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars.

(a) No individual, political committee, or other entity shall make any contribution anonymously, except as provided in G.S. 163-278.8(d), or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. 163-278.8(d). If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina.

(b) No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars ($100.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For a contribution made by credit card, the credit card account number of a contributor is not a public record.

(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S 163-278.7(b)(1). (1973, c. 1272, s. 1; 1979, c. 1073, s. 19; 1987, c. 113, s. 2; 1999-453, s. 4(a); 2001-319, s. 10(a); 2002-159, s. 55(k); 2004-125, s. 5(b).)

Editor's Note. — Session Laws 2004-125, s. 6, is a severability clause.

Effect of Amendments. — Session Laws 2004-125, s. 5.(b), effective July 20, 2004, and applicable to any contribution made on or after January 1, 2003, substituted "No entity" for "No individual or person" at the beginning of subsection (b).

§ 163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."

CASE NOTES

Constitutionality. — Section 163-278.14A(a)(2) is unconstitutionally vague and overbroad; the context prong of G.S. 163-278.14A impermissibly regulates issue advocacy. This test violates the express advocacy test adopted by the United States Supreme Court in that it does not limit the scope of "express advocacy" to include only clear words that directly fit the term "express advocacy," but instead allows consideration of various contextual factors. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

First sentence of G.S. 163-278.14A(a)(2) impermissibly dilutes the Buckley standard by allowing regulation of communications which do not contain explicit words of advocacy. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.27. Criminal penalties; duty to report and prosecute.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.34. Civil penalties.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.34A. Presumptions.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

Part 1A. Disclosure Requirements for Media Advertisements.

§ 163-278.38Z. Definitions.

As used in this Part:

(1) "Advertisement" means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.

(2) "Candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of

organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.

(3) "Candidate campaign committee" means any political committee organized by or under the direction of a candidate.

(4) "Full-screen" means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(5) "Political action committee" has the same meaning as "political committee" in G.S. 163-278.6(14), except that "political action committee" does not include any political party or political party organization.

(6) "Political party organization" means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A "mass mailing" is a mailing with more than 500 pieces.

(8) "Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(9) "Scan line" means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(10) "Sponsor" means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.

(11) "Television" means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(12) "Unobscured" means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face. (1999-453, s. 2(a); 2004-203, s. 12(a).)

Editor's Note. — This section was originally enacted by Session Laws 1999-453, s. 2(a), as G.S. 163-278.39B and was recodified as this section by Session Laws 2004-203, s. 12(a).

§ 163-278.39B: Recodified as G.S. 163-278.38Z by Session Laws 2004-203, s. 12(a), effective August 17, 2004.

Editor's Note. — This section was enacted as G.S. 163-278.39B and was recodified as G.S. 163-278.38Z by Session Laws 2004-203, s. 12(a).

Article 22B.

Appropriations from the North Carolina Political Parties Financing Fund.

§ 163-278.41. Appropriations in general election years and other years.

(a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential

election is held, the State chair of that political party may apply to the State Board of Elections (State Board) for the disbursement of all funds deposited with the State Treasurer on behalf of that party in the North Carolina Political Parties Financing Fund (Political Parties Fund) to be administered by the State Board of Elections and in which shall be placed money contributed by taxpayers, as provided in G.S. 105-159.1. If the regular date set for a primary in G.S. 163-1 or nominating convention in G.S. 163-98 is temporarily postponed for one election year, the State party chair may apply for the disbursement after the regular date set in those sections for that party's primary or convention, even though the primary has not occurred under the temporary schedule. Upon receipt of that application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of that chair's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Upon receipt of that application, the State Board shall pay over to the chair all funds currently held by the State Treasurer in the "Presidential Election Year Candidates Fund" of that party, which funds shall be allocated and disbursed during the presidential election year by the same procedure as the funds received from the Political Parties Fund are allocated. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution pursuant to this section.

(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chair of the political party may apply to the State Board for the disbursement of all funds deposited on behalf of such party in the Political Parties Fund. If the regular date set for a primary in G.S. 163-1 or nominating convention in G.S. 163-98 is temporarily postponed for one election year, the State party chair may apply for the disbursement after the regular date set in those sections for that party's primary or convention, even though the primary has not occurred under the temporary schedule. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of that chair's political party provided that all such payments to the chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution pursuant to this section.

(c) In each year in which no general election is held, each State chair of a political party on behalf of which funds have been deposited in the Political Parties Fund may, on or between August 1 and September 1 thereof, apply to the State Board for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of that party. Upon receipt of such application, the State Board shall pay over to that State chair an amount not to exceed fifty percent (50%) of the then available funds credited to the account of that party. Additionally and upon receipt of that application, the State Board shall direct the State Treasurer to place fifty percent (50%) of those available funds in a separate interest bearing account to be known as the "Presidential Election Year Candidates Fund of the (name of the party) Party" to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution by the State Board pursuant to this section. Any interest earned on the funds deposited in such Presidential Election Year Campaign Fund shall be credited thereto. (1977, 2nd Sess., c. 1298, s. 2; 1983, c. 700, s. 5; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 347, s. 1; c. 397, s. 1; 2003-434, 1st Ex. Sess., s. 14.)

Editor's Note. —
Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

Effect of Amendments. — Session Laws 2003-434, 1st Ex. Sess., s. 14, effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts, inserted the second sentence in subsection (a) and subsection (b), and made minor stylistic changes throughout the section.

ARTICLE 22D.

The North Carolina Public Campaign Financing Fund.

§ 163-278.64. Requirements for participation; certification of candidates.

(a) Declaration of Intent to Participate. — Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. — Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9).

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. — Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements, if they apply to that candidate:

(1) Signed and filed a declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Qualified to receive votes on the ballot as a candidate for the office.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. — The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up

to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall expend no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or the remaining money raised pursuant to subdivision (1) of this subsection. Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions and personal and family contributions permitted by subdivision (4) of this subsection.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign and may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. — A candidate may revoke, in writing to the Board, a decision to participate in the Public Campaign Financing Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund. (2002-158, s. 1; 2004-203, s. 60.)

Effect of Amendments. — Session Laws 2004-203, s. 60, effective August 17, 2004, added the third and last sentences of subdivision (d)(5).

ARTICLE 22E.

Electioneering Communications.

§ 163-278.80. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:
   a. The first date during any calendar year when an electioneering communication is aired after an entity has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).
   b. Any other date during that calendar year by which an entity has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:
   a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
   b. Is made within one of the following time periods:
      1. 60 days before a general or special election for the office sought by the candidate, or
      2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
   c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:
   a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.
   b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
   c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
   d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(6) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(7) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2004-125, s. 1.)

Editor's Note. — Session Laws 2004-125, s. 6, is a severability clause.

Session Laws 2004-125, s. 7, provides: "This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004."

§ 163-278.81. Disclosure of Electioneering Communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity making the disbursement, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity making the disbursement.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the disbursement was made.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. (2004-125, s. 1.)

§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication. (2004-125, s. 1.)

§ 163-278.83. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any organization covered by this Article the disclosures required by this Article that the Board has to compel from a political committee the disclosures required by Article 22A of this Chapter. The civil penalties in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.82. (2004-125, s. 1.)

Editor's Note. — Session Laws 2004-125, s. 7, provides that any criminal penalty resulting from this act becomes effective October 1, 2004.

Article 22F.

Mass Mailings and Telephone Banks: Electioneering Communications.

§ 163-278.90. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has made disbursements for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has made disbursements for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten

thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:
   a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
   b. Is made within one of the following time periods:
      1. 60 days before a general or special election for the office sought by the candidate, or
      2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
   c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:
   a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
   b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
   c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
   d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.
   e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

(4) The term "mass mailing" means any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(6) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which:
   a. If transmitted by mail or facsimile in connection with a clearly identified candidate for statewide office, is transmitted to 50,000 or more addresses in the State, by the transmission of identical or substantially similar matter within any 30-day period, or, in connection with a clearly identified candidate for the General Assembly, is transmitted to 5,000 or more addresses in the district, by the transmission of identical or substantially identical matter within any 30-day period.
   b. If transmitted by telephone, in connection with a clearly identified candidate for statewide office, more than 50,000 telephone calls in

the State of an identical or substantially similar nature within any 30-day period, or in the case of a clearly identified candidate for the General Assembly, more than 5,000 calls in the district of an identical or substantially similar nature within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2004-125, s. 2.)

Editor's Note. — Session Laws 2004-125, s. 7, provides: "This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004."

Session Laws 2004-125, s. 6, is a severability clause.

§ 163-278.91. Disclosure of Electioneering Communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals who makes a disbursement for the direct costs of producing and transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity making the disbursement, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity making the disbursement.

(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

(3) The amount of each disbursement of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the disbursement was made.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subdivision is to be construed as a prohibition on the

use of funds in such a segregated account for a purpose other than electioneering communications.

(6) If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. (2004-125, s. 2.)

§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication. (2004-125, s. 2.)

§ 163-278.93. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any organization covered by this Article the disclosures required by this Article that the Board has to compel from a political committee the disclosures required by Article 22A of this Chapter. The civil penalties in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.92. (2004-125, s. 2.)

Editor's Note. — Session Laws 2004-125, s. 7, provides that any criminal penalty resulting from this act becomes effective October 1, 2004.

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-296. Nomination by petition.

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of [Elections] as of January 1 of the year in which the general [municipal] election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office. (1971, c. 835, s. 1; 1979, c. 23, ss. 2, 4, 5; c. 534, ss. 3, 4; 1989, c. 402; 1991, c. 297, s. 2; 2004-127, s. 8(b).)

Editor's Note. — The bracketed "[Elections]" and "[municipal]" were inserted near the end of the first sentence at the direction of the Revisor of Statutes to reflect the apparent intention of the Legislature.

Effect of Amendments. — Session Laws 2004-127, s.8(b), effective July 26, 2004, in the first sentence, substituted "voter registration records of" for "most recent figures certified by," and at the end of the first sentence, substituted "as of January 1 of the year in which the general election is to be held" for "Elections."

§ 163-299. Ballots; municipal primaries and elections.

(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State, or, in nonpartisan municipal elections, the names of all candidates who have filed notices of candidacy or who have been nominated in a nonpartisan primary.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-296.

(3) All questions, issues and propositions to be voted on by the people.

(b) The form of municipal ballots to be used in partisan municipal elections shall be the same as the form prescribed in this Chapter for the county ballot.

(c) The names of candidates for nomination or election in municipal primaries or elections shall be placed on the ballot in strict alphabetical order, unless the municipal governing body has adopted a resolution no later than 60 days prior to a primary or election requesting that candidates' names be rotated on ballots. In the event such a resolution has been adopted, then the board of elections responsible for printing the ballots shall have them printed so that

the name of each candidate shall, as far as practicable, occupy alternate positions on the ballot; to that end the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(d) The provisions of Articles 14A and 15A of this Chapter shall apply to ballots used in municipal primaries and elections in the same manner as it is applied to county ballots.

(e) The rules contained in G.S. 163-182.1 and G.S. 163-182.2 for counting primary ballots shall be followed in counting ballots in municipal primaries and nonpartisan primaries.

(f) The requirements contained in G.S. 163-182.2(b) shall apply to all municipal elections.

(g) The county or municipal board of elections shall, in addition to the requirements contained in G.S. 163-182.5 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office. (1971, c. 835, s. 1; 1979, c. 534, s. 4; c. 806; 2001-398, ss. 10, 11, 12; 2001-460, ss. 7, 8; 2004-127, s. 5.)

Effect of Amendments. — Session Laws 2004-127, s. 5, effective July 26, 2004, substituted "14A" for "13A" in subsection (d).

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 4.

Sentencing Commission.

§ 164-35. Commission established.

Editor's Note. —

Session Laws 2004-186, s. 12.1, provides: "The General Assembly finds that the North Carolina Sentencing and Policy Advisory Commission has adopted formal criteria for classifying felony offenses. The Sentencing Commission has identified three general types of harms: harms to persons (including both physical and mental injury); harms to property; and harms to society. The degrees of harm are divided into three levels:

"(1) Injury to person, property, or society;

"(2) Significant injury to person, property, or society; and

"(3) Serious injury to person, property, or society. The stated purpose of establishing the criteria was 'to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.'

"In contrast to the felony classification criteria, the Commission did not create classification criteria for misdemeanors. However, the current misdemeanor sentencing laws include an assault offense that has serious injury as an element — even though 'serious injury to a person' is a category of harm for felony offense classification. The General Assembly finds that the classification of assault offenses that involve serious injury as misdemeanors is inconsistent with the Sentencing Commission's classification of felonies based on harm.

"The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study the classification of misdemeanor offenses. In particular, the Commission shall examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. The Commission shall develop a system for classifying misdemeanor offenses on the basis of their severity. The Commission may consider reclassifying existing offenses and creating new offenses in order to insure proportionality and consistency. The Commission shall report its findings and recommendations to the 2005 General Assembly, 2005 Regular Session. The report shall describe the status of the Commission's work and shall include any completed policy recommendations and proposed legislation. The Commission shall make a final report to the 2005 General Assembly, 2006 Regular Session."

§ 164-42.1. Policy recommendations.

Editor's Note. — Session Laws 2004-124, s. 16.5, provides: "Pursuant to G.S. 164-42.1 and G.S. 164-43, the North Carolina Sentencing and Policy Advisory Commission shall prepare biennial reports on juvenile recidivism in North Carolina. The Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention and the Fiscal Research Division of the Legislative Services Office of the General Assembly in developing a methodology for measuring juvenile recidivism in North Carolina. The Commission shall report the proposed methodology to the 2005 General Assembly by March 1, 2005. The Commission's report shall also include a timeline for completing the initial analysis and recidivism report and any proposed legislation regarding juvenile recidivism. The report shall also include recommendations for other outcome measures that are appropriate for evaluating juvenile program effectiveness."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 contains a severability clause.

§ 164-43. Priority of duties; reports; continuing duties.

Editor's Note. —

Session Laws 2004-124, s. 16.5, provides: "Pursuant to G.S. 164-42.1 and G.S. 164-43, the North Carolina Sentencing and Policy Advisory Commission shall prepare biennial reports on juvenile recidivism in North Carolina. The Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention and the Fiscal Research Division of the Legislative Services Office of the General Assembly in developing a methodology for measuring juvenile recidivism in North Carolina. The Commission shall report the proposed methodology to the 2005 General Assembly by March 1, 2005. The Commission's report shall also include a timeline for completing the initial analysis and recidivism report and any proposed legislation regarding juvenile recidivism. The report shall also include recommendations for other outcome measures that are appropriate for evaluating juvenile program effectiveness."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

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Session Laws 2004-124, s. 33.5 contains a severability clause.

Chapter 165.

Veterans.

Article 8.

State Veterans Home.

§ 165-48. North Carolina Veterans Home Trust Fund.

Editor's Note. — Session Laws 2004-124, s. 2.2(e), provides: "Notwithstanding G.S. 165-48, five hundred thousand dollars ($500,000) of the cash balance remaining in the NC Veterans Home Trust Fund (Budget Code 64106, Fund 6771) on July 1, 2004, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers). These funds shall be used to support the General Fund appropriation for the 2004-2005 fiscal year for the start-up cost of the State Veterans Nursing Home in Salisbury."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 is a severability clause.

Chapter 166A.

North Carolina Emergency Management Act.

Article 1.

North Carolina Emergency Management Act of 1977.

§ 166A-1. Short title.

Hurricane Evacuation Standards Study Commission — Session Laws 2004-161, ss. 32.1 to 32.6, create the Hurricane Evacuation Standards Study Commission. Session Laws 2004-161, ss. 32.2 and 32.3, provide: "32.2. The Commission shall study the development and establishment of hurricane evacuation standards for the State. The Commission shall consider and recommend to the General Assembly those legislative actions necessary to implement its recommendations.

"32.3. The following State employees shall attend each meeting of the Commission and shall provide technical support and expertise to the Commission to develop appropriate State hurricane evacuation standards:

"(1) Director, Division of Emergency Management, Department of Crime Control and Public Safety.

"(2) Chief of Logistics, Division of Emergency Management, Department of Crime Control and Public Safety.

"(3) State Roadway Design Engineer, Department of Transportation.

"(4) Assistant State Roadway Design Engineer, Department of Transportation.

"(5) Division Engineer, Division 1, Department of Transportation.

"(6) Division Engineer, Division 2, Department of Transportation.

"(7) Division Engineer, Division 3, Department of Transportation.

"(8) Division Traffic Engineer, Division 1, Department of Transportation.

"(9) Division Traffic Engineer, Division 2, Department of Transportation.

"(10) Division Traffic Engineer, Division 3, Department of Transportation."

Session Laws 2004-161, s. 32.5, provides that the Commission shall report its findings and recommendations by January 15, 2005, and shall terminate upon the earlier of the filing of the final report or the convening of the 2005 General Assembly.

Chapter 168.

Handicapped Persons.

Article 1.

Rights.

Sec.
168-2. Right of access to and use of public places.
168-4.2. May be accompanied by service animal.
168-4.3. Training and registration of service animal.
168-4.4. Responsibility for service animal.

Article 1.

Rights.

§ 168-2. Right of access to and use of public places.

Handicapped persons have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of Commerce shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services. (1973, c. 493, s. 1; 1991, c. 672, s. 4; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 84; 1997-443, s. 11A.118(a); 2004-203, s. 61.)

Effect of Amendments. — Session Laws 2004-203, s. 61, effective August 17, 2004, substituted "Commerce" for "Economic and Community Development" in the fourth sentence.

§ 168-4.2. May be accompanied by service animal.

Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, hearing impaired person, as defined in G.S. 8B-1(2), or person with a seizure disorder has the right to be accompanied by a service animal especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168-3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3 but may not occupy a seat in any of these places. The service animal may

accompany that animal's trainer during training sessions in any of the places listed in G.S. 168-3.

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function. (1985, c. 514, s. 1; 1987, c. 401, s. 1; 1995, c. 276, s. 1; 1997-443, s. 11A.118(a); 2004-203, s. 62(a).)

Effect of Amendments. — Session Laws 2004-203, s. 62.(a), effective August 17, 2004, rewrote the section heading which read: "May be accompanied by assistance dog"; in the first paragraph, deleted "or" preceding "visual disability," inserted "or person with a seizure disorder" preceding "has the right," substituted "service animal" for "assistance dog" wherever it appears, substituted "under" for "pursuant to," substituted "animal" for "dog," substituted "service animal may accompany that animal's trainer" for "trainer of the assistance dog may be accompanied by the dog," and made punctuation and stylistic changes throughout.

§ 168-4.3. Training and registration of service animal.

The Department of Health and Human Services, shall adopt rules for the registration of service animals and shall issue registrations to a visually impaired person, a hearing impaired person, a mobility impaired person, or a person with a seizure disorder who makes application for registration of an animal that serves as a service animal. The rules adopted regarding registration shall require that the animal be trained as a service animal by an appropriate agency, and that the certification and registration be permanent for the particular animal and need not be renewed while that particular animal serves the person applying for registration as a service animal. No fee may be charged the person for the application, registration, tag, or replacement in the event the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities. (1985, c. 514, s. 1; 1987, c. 401, s. 2; 1997-443, s. 11A.118(a); 2004-203, s. 62(b).)

Effect of Amendments. — Session Laws 2004-203, s. 62.(b), effective August 17, 2004, rewrote the section heading which read: "Training and registration of assistance dog"; in the first sentence, substituted "service animals" for "assistance dogs," deleted "or" following "a mobility impaired," inserted ", or a person with a seizure disorder" following "mobility impaired person," substituted "an animal" for "a dog"; substituted "a service animal" for "an assistance dog" in the first and second sentences; and substituted "animal" for "dog" three times in the second sentence.

§ 168-4.4. Responsibility for service animal.

The visually impaired person, hearing impaired person, mobility impaired person, or person with a seizure disorder who is accompanied by a service animal may not be required to pay any extra compensation for the animal. The person has all the responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any animal, including liability for any damage done by the animal. (1985, c. 514, s. 1; 2004-203, s. 62(c).)

Effect of Amendments. — Session Laws 2004-203, s. 62.(c), effective August 17, 2004, rewrote the section heading which read: "Responsibility for assistance dog"; deleted "or" following "hearing impaired person," inserted "or person with a seizure disorder" following "mobility impaired person," substituted "a service animal" for "an assistance dog," and substituted "animal" for "dog" wherever it appears.

Chapter 168A.

Persons With Disabilities Protection Act.

§ 168A-1. Title.

CASE NOTES

Cited in Gottesman v. J.H. Batten, Inc., 286 F. Supp. 2d 604, 2003 U.S. Dist. LEXIS 18228 (M.D.N.C. 2003).

§ 168A-3. Definitions.

CASE NOTES

Person with Disability. —
Insurance investigator's wrongful-discharge claim on the basis of disability under North Carolina law failed because he could not show that he was regarded as disabled under North Carolina law since his employer continued to employ him and even increased his salary after it removed large-loss claims from his job responsibilities. Rishel v. Nationwide Mut. Ins. Co., 297 F. Supp. 2d 854, 2003 U.S. Dist. LEXIS 23463 (M.D.N.C. 2003).

§ 168A-5. Discrimination in employment; exemptions.

CASE NOTES

Cited in Wilkins v. Guilford County, 158 N.C. App. 661, 582 S.E.2d 74, 2003 N.C. App. LEXIS 1224 (2003); Sabrowski v. Albani-Bayeux, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 23242 (M.D.N.C. Dec. 19, 2003).

§ 168A-11. Civil action.

CASE NOTES

Relation to Federal Laws. — Where plaintiff student's claims against defendant school district under the North Carolina Persons with Disabilities Protection Act, G.S. 168A-1 et seq., arose from the same facts and circumstances as the Americans with Disabilities Act of 1990, 42 U.S.C.S. § 12181 et seq., and the Rehabilitation Act of 1973 claims, which had failed, the student's claims under G.S. 168A-11(a) also failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

§ 168A-12. Statute of limitations.

CASE NOTES

Claim Barred. —
Because the employee did not file his claim under the NCPDPA until 273 days after the last alleged discriminatory act, the employee's claim was time-barred by the 180 day statute of limitations set forth in G.S. 168A-12. Gottesman v. J.H. Batten, Inc., 286 F. Supp. 2d 604, 2003 U.S. Dist. LEXIS 18228 (M.D.N.C. 2003).

Constitution of North Carolina

Article IV.

Judicial.

Sec.
10. (Effective January 1, 2005, contingent upon certification of approval of constitutional amendment) District Courts.

ARTICLE I

DECLARATION OF RIGHTS

Section 1. The equality and rights of persons.

CASE NOTES

I. General Consideration.
IV. Judicial Process.

I. GENERAL CONSIDERATION.

This Section Does Not Give Individuals a Remedy Against Corporate Defendants in a Private Dispute. — Employee's N.C. Const. art. I, § 1 claims against his former employer were dismissed because N.C. Const. art. I, § 1 did not give individuals a remedy against a corporate defendant in a private dispute. Freeman v. Duke Power Co., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 14432 (M.D.N.C. Aug. 15, 2003).

Cited in Seaton v. Owens, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22298 (M.D.N.C. Dec. 8, 2003); State v. Sinnott, — N.C. App. —, 593 S.E.2d 439, 2004 N.C. App. LEXIS 370 (2004).

IV. JUDICIAL PROCESS.

Punitive Damages Cap. — The statutory limit on punitive damages in G.S. 1D-25 does not constitute an unconstitutional taking of property by denying plaintiffs of the "enjoyment of the fruits of their own labor" under N.C. Const. art. I, § 1 because (1) a jury's verdict is not "property" in which a plaintiff enjoys a vested right where the limitation on punitive damages applies prior to the entry of judgment; and (2) a litigant's participation in a trial is not a "labor" nor is a jury's verdict the "fruits" of that labor. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

Sec. 6. Separation of powers.

CASE NOTES

I. In General.

I. IN GENERAL.

Constitution Shields Judicial Branch from Legislative Interference So Far as Its Inherent Rights and Powers. — Pursuant to N.C. Const. art. I, § 6 and N.C. Const. art. IV, § 1, the North Carolina Constitution shields the judicial branch from legislative interference, so far at least as its inherent rights and powers are concerned. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

Redistricting. — G.S. 120-2.3 and G.S. 120-2.4 are not unconstitutional limitations on the judicial branch, as they allow the General Assembly to exercise its proper responsibilities and they decrease the risk that the courts will encroach upon the responsibilities of the legislative branch, pursuant to N.C. Const. art. I, § 6. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Punitive Damages Cap. —

G.S. 1D-25 does not operate as a "legislative remittitur" because, unlike remittitur, G.S.

1D-25 does not grant the General Assembly the authority to remit excessive awards on a case-by-case basis, but rather, by enacting G.S. 1D-25, the General Assembly has imposed a limit on the recovery of punitive damages in all cases; this function is wholly distinct from that within the trial court's authority to apply fixed laws to individual controversies, and thus, G.S. 1D-25 did not violate separation of powers principles under N.C. Const. art. I, § 6. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

G.S. 1D-25 does not represent an impermissible interference with the judiciary's constitutionally defined authority because the Constitution neither expressly nor implicitly empowers North Carolina courts to award punitive damages or to remit excessive awards thereof; rather, because punitive damages are awarded on grounds of public policy, G.S. 1D-25 is a modification of the common law within the General Assembly's policy-making authority to define legally cognizable remedies. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

Division of Motor Vehicle's Action Violated Separation of Powers Doctrine. — North Carolina Division of Motor Vehicles violated the separation of powers clause in the North Carolina Constitution and violated a driver's right to due process when it unilaterally voided a district court ordered limited driving privilege to a driver; furthermore, by allowing the North Carolina Division of Motor Vehicles to, in essence, invalidate a properly entered court order, G.S. 20-179.3(k) violates the provisions requiring separation of powers contained in N.C. Const. art. I, § 6; N.C. Const. art. IV, § 1; and N.C. Const. art. IV, § 3. State v. Bowes, 159 N.C. App. 18, 583 S.E.2d 294, 2003 N.C. App. LEXIS 1439 (2003).

Applied in Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Sec. 7. Suspending laws.

CASE NOTES

Cited in Seaton v. Owens, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22298 (M.D.N.C. Dec. 8, 2003).

Sec. 12. Right of assembly and petition.

CASE NOTES

Cited in State v. Hunt, 357 N.C. 257, 582 S.E.2d 593, 2003 N.C. LEXIS 746 (2003), cert. denied, 539 U.S. 985, 124 S. Ct. 44, 156 L. Ed. 2d 702 (2003).

Sec. 14. Freedom of speech and press.

CASE NOTES

I. General Consideration.
III. Restrictions on Exercise of Rights.

I. GENERAL CONSIDERATION.

Cited in Love-Lane v. Martin, 355 F.3d 766, 2004 U.S. App. LEXIS 937 (4th Cir. 2004).

III. RESTRICTIONS ON EXERCISE OF RIGHTS.

Waiver of Right to Freedom of Speech. — Parents offered no evidence to show that their First Amendment right to freedom of speech was not knowingly, voluntarily, and intelligently waived. The parents and their attorney agreed to and executed the mediated settlement agreement, and specifically agreed to the paragraphs which limited their speech regarding the deputy. Estate of Barber v. Guilford County Sheriff's Dep't, 161 N.C. App. 658, 589 S.E.2d 433, 2003 N.C. App. LEXIS 2256 (2003).

Sec. 16. Ex post facto laws.

CASE NOTES

Sex Offender Registration not Ex Post Facto Law. — G.S. 14-208.11 is not an impermissible ex post facto law. State v. White, 162 N.C. App. 183, 590 S.E.2d 448, 2004 N.C. App. LEXIS 111 (2004).

Sec. 17. Slavery and involuntary servitude.

CASE NOTES

Cited in State v. Sinnott, — N.C. App. —, 593 S.E.2d 439, 2004 N.C. App. LEXIS 370 (2004).

Sec. 18. Courts shall be open.

Legal Periodicals. —
For note, "Rule 9(j) — Is Requiring a Plaintiff in a Medical Malpractice Action to Certify His or Her Claim Before Filing Unconstitutional ? — The Issue in Anderson v. Assimos," 25 Campbell L. Rev. 219 (2003).

CASE NOTES

I. General Consideration.
II. Access to the Courts.
V. Speedy Criminal Trials.

I. GENERAL CONSIDERATION.

Punitive Damages Cap. —
Because the Open Courts Clause of N.C. Const. art. I, § 18 does not prevent the General Assembly from abolishing the recovery of punitive damages altogether, it follows that G.S. 1D-25, which limits the awards of punitive damages, does not violate the Open Courts Clause. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

II. ACCESS TO THE COURTS.

In Forma Pauperis Proceedings. — N.C. Const. art. I, § 18 provides for open courts and G.S. 1-110 furthers the right by allowing access "to sue" in North Carolina's courts, notwithstanding a party's inability to advance court costs; however, the legislature's use of the words "to sue" and "advance" in G.S. 1-110 clearly indicate its intent that a motion to proceed in forma pauperis should be filed in "advance" of filing suit. Griffis v. Lazarovich, — N.C. App. —, 595 S.E.2d 797, 2004 N.C. App. LEXIS 821 (2004).

V. SPEEDY CRIMINAL TRIALS.

Defendant was not deprived of his constitutional right to a speedy trial, etc.
There was no error in denying defendant's motion to dismiss because defendant's constitutional right to a speedy trial was not violated even though almost two years passed between the date of the offenses and trial; defendant failed to demonstrate actual or substantial prejudice resulting from the delay as he alleged only anxiety and concern, and also failed to meet his burden of showing that the reason for the delay was the neglect or willfulness of the prosecution. State v. Doisey, 162 N.C. App. 447, 590 S.E.2d 886, 2004 N.C. App. LEXIS 188 (2004).

Sec. 19. Law of the land; equal protection of the laws.

Legal Periodicals. —
For note, "Rule 9(j) — Is Requiring a Plaintiff in a Medical Malpractice Action to Certify His or Her Claim Before Filing Unconstitutional ? — The Issue in Anderson v. Assimos," 25 Campbell L. Rev. 219 (2003).

CASE NOTES

I. General Consideration.
II. Due Process and the "Law of the Land".
III. Equal Protection.
IV. Rights of Defendants.
A. In General.
B. Composition of Juries.
C. Double Jeopardy.
VII. Taking of Private Property for Public Use.
B. Public Use.
XI. Illustrative Cases.
A. Statutes, Proceedings, etc., Upheld.

I. GENERAL CONSIDERATION.

Other State Remedies Must Be Exhausted. —

Individual's constitutional claims against the sheriff, the sheriff's department, the county, and the detective, based upon the stopping, searching, and detaining of the individual and the retention of his property, were dismissed because the existing common law remedies of false imprisonment, trespass to chattels, and negligence were appropriate alternatives under the facts alleged in the complaint and waiver of governmental immunity was not pleaded. Seaton v. Owens, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22298 (M.D.N.C. Dec. 8, 2003).

Where Employee Was Not Without an Adequate Legal Remedy, He Could Not State a Claim Under This Section. — Where an employee was entitled to seek relief pursuant to § 301 of the Labor-Management Relations Act, 29 U.S.C.S. § 185, he was not without an adequate legal remedy and thus could not state a claim directly under N.C. Const. art. I, § 19. Freeman v. Duke Power Co., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 14432 (M.D.N.C. Aug. 15, 2003).

Cited in State v. Rasmussen, 158 N.C. App. 544, 582 S.E.2d 44, 2003 N.C. App. LEXIS 1219 (2003); Love-Lane v. Martin, 355 F.3d 766, 2004 U.S. App. LEXIS 937 (4th Cir. 2004); State v. Sinnott, — N.C. App. —, 593 S.E.2d 439, 2004 N.C. App. LEXIS 370 (2004); Huber v. N.C. State Univ., — N.C. App. —, 594 S.E.2d 402, 2004 N.C. App. LEXIS 569 (2004).

II. DUE PROCESS AND THE "LAW OF THE LAND".

Denial of Parents' Rights. — Where the court merely recited the testimony of witnesses and did not make the required findings of fact, further findings of fact and a determination of the father's parental fitness was needed if he was to be denied all contact with his daughter. Moore v. Moore, 160 N.C. App. 569, 587 S.E.2d 74, 2003 N.C. App. LEXIS 1827 (2003).

Due Process Not Denied When Prosecutor Chose to Prosecute Under Substantivve Crime Rather Than Criminal Contempt. — Defendant's prosecution for failure to appear did not violate defendant's due process rights under N.C. Const. art. I, § 19, where defendant was prosecuted under G.S. 15A-543, and defendant could have been punished for failure to appear under the criminal contempt statute, G.S. 5A-12(a); because there was evidence from which a jury could have found that defendant violated either G.S. 15A-543 or G.S. 5A-12(a), it was within the prosecutor's discretion to decide under which statute the State wished to proceed. State v. Dammons, 159 N.C. App. 284, 583 S.E.2d 606, 2003 N.C. App. LEXIS 1539 (2003), cert. denied, 357 N.C. 579, 589 S.E.2d 133 (2003).

Outdoor Advertising Was Not a Fundamental Right for Purposes of Substantive Due Process. — While the general assembly had declared that outdoor advertising was a legitimate commercial use of private property adjacent to roads and highways, such advertising did not involve a fundamental right for purposes of a substantive due process analysis of regulations governing the height of billboards. Capital Outdoor, Inc. v. Tolson, 159 N.C. App. 55, 582 S.E.2d 717, 2003 N.C. App. LEXIS 1417 (2003), cert. denied, 357 N.C. 504, 587 S.E.2d 662 (2003).

No Denial of Procedural Due Process. — An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a procedural due process challenge to the statute and the ordinance under the Fourteenth Amendment and N.C. Const. art. I, § 19; upon considering the merits of the claim, the court granted defendants' motions for summary judgment because the individual failed to avail himself of any of the procedural processes defendants made available and he lacked U.S. Const. art. III, § 2 standing to challenge such processes. More fundamentally, even if the individual did have standing, the foundational premise of his claim was fatally flawed because the statute and the ordinance were clearly civil in nature.

Finally, after analyzing each of the individual's ten specific contentions to determine whether the process provided was sufficient in a civil setting, the court concluded that, in each instance, due process was adequately afforded to citation recipients such as the individual. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Wife's due process rights were not violated by a delay in the trial proceedings or by the four month period between the the trial court's oral announcement of it final decision and the entry of judgment; the trial delay appeared to be the result of the wife's actions and there was a large amount of property at issue in the equitable distribution judgment. White v. Davis, — N.C. App. —, 592 S.E.2d 265, 2004 N.C. App. LEXIS 256 (2004).

III. EQUAL PROTECTION.

Punitive Damages Cap Upheld. —

Because the limitation on punitive damages contained in G.S.1D-25 bears some rational relationship to several legitimate governmental interests, G.S. 1D-25 does not violate principles of due process and equal protection as guaranteed by N.C. Cont. art. I, § 19. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

No Equal Protection Violation. — An individual, who was assessed a $ 50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched an equal protection challenge to the statute and the ordinance under the Fourteenth Amendment and N.C. Const. art. I, § 19; upon considering the merits of the claim, the court granted defendants' motions for summary judgment because the individual failed to identify any fundamental right allegedly abridged by the statute or the ordinance or to allege membership in any suspect class; additionally, the individual failed to surmount the formidable presumption of validity bestowed upon the statute and the ordinance by the rational basis review standard. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Illustrative Cases. —

Chancellor and the vice-chancellor's motion to dismiss the professor's state claims under N.C. Const. art. I, § 19 on the basis that their adjudication was barred by the Eleventh Amendment was denied because sovereign immunity did not apply to North Carolina state constitutional claims; thus, the chancellor and the vice-chancellor's removal of the claims to federal court waived their Eleventh Amendment immunity. Azam v. Fort, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 20874 (M.D.N.C. Nov. 7, 2003).

City was denied summary judgment on an employee's equal protection claims brought pursuant to U.S. Const. amend. XIV and N.C. Const. art. I, § 19, where the employee had raised issues of fact as to whether race was a motivating factor in the decision to terminate her from the police force and the termination was approved by the city manager, who was vested with final decision-making authority. Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

IV. RIGHTS OF DEFENDANTS.

A. In General.

Use of Short-form Indictment. — Court of appeals rejected defendant's argument that the trial court violated his rights under U.S. Const. amends. V, VI, and XIV and N.C. Const. art. I, §§ 19, 22, and 23 by entering a judgment convicting him of felony murder and sentencing him to life imprisonment without parole on the basis of a short-form indictment. State v. Coleman, 161 N.C. App. 224, 587 S.E.2d 889, 2003 N.C. App. LEXIS 2039 (2003).

Prosecutor's Statements. —

Defendant was not entitled to a new trial due to the State's improper closing argument which was sufficiently close to making an association between defendant and a wild animal to lead to such an inference, including a statement that "he who hunts with the pack is responsible for the kill," multiple references to hunting on the African plain when defendant was an African-American, and references to an accomplice as an "alpha male" and to defendant as a follower in the pack, as: (1) the State did not misstate the evidence or the law in making its argument, (2) the trial court instructed the jury that closing arguments were not evidence, (3) there was an abundance of evidence, both physical and testimonial, that defendant was guilty of the crimes charged, and (4) although improper, the State's comments did not deny defendant due process. State v. Sims, 161 N.C. App. 183, 588 S.E.2d 55, 2003 N.C. App. LEXIS 2044 (2003).

B. Composition of Juries.

Juror's Failure to Disclose Information. — Defendant was not denied his rights to confrontation, to effective assistance of counsel, to due process, to a jury trial, and to be free from cruel and unusual punishment when the trial court denied defendant's motion for a mistrial based on the alleged misconduct of a juror; the juror inadvertent failure to disclose the 40-year-old information she had forgotten did not amount to concealment, and the juror demonstrated no bias. State v. Maske, 358 N.C.

40, 591 S.E.2d 521, 2004 N.C. LEXIS 18 (2004).

Impartiality of Jury Not Compromised by Juror Who Had "Crossed Paths" With Witness. — Defendant's right to due process was not violated where a juror failed to indicate during jury selection that he knew a witness as the two had merely "crossed paths before" and thus, there was no possibility that a personal connection to the case compromised the juror's ability to be fair and just. State v. Banks, — N.C. App. —, 591 S.E.2d 917, 2004 N.C. App. LEXIS 257 (2004), cert. denied, 358 N.C. 377, 597 S.E.2d 767 (2004).

C. Double Jeopardy.

Double Jeopardy Not Shown. —

Defendant's constitutional double jeopardy protection was not violated where defendant was convicted of first-degree kidnapping, assault with a deadly weapon with intent to kill inflicting serious injury, and maiming without malice because the offenses contained distinct elements not found in the others. State v. Scott, 161 N.C. App. 104, 587 S.E.2d 485, 2003 N.C. App. LEXIS 1999 (2003), cert. denied, 358 N.C. 158, 593 S.E.2d 398 (2004).

Where defendant dragged his wife by the hair into the house and then beat her with his gun, defendant's convictions of first-degree kidnapping in violation of G.S. 14-39(a) and assault with a deadly weapon inflicting serious injury in violation of G.S. 14-32(b) did not violate double jeopardy under N.C. Const. art. I, § 19; the restraint and removal of the wife, which was the act of dragging her into the house, were separate from the commission of the assault, which was the act of beating the wife with the gun once the kidnapping had been completed. State v. Romero, — N.C. App. —, 595 S.E.2d 208, 2004 N.C. App. LEXIS 729 (2004).

No Double Jeopardy Where There Was No Final Verdict in the First Case. — Where a jury wrote a note to the court indicating that it could unanimously agree that minimally the defendant was guilty of second degree murder, but could not unanimously reach a verdict with regard to first degree murder, and the jury was erroneously advised that it must unanimously agree to acquittal of first degree murder before consideration of the lesser offense, a retrial of defendant for first degree murder did not constitute double jeopardy since there was never a final verdict in the first trial. State v. Mays, 158 N.C. App. 563, 582 S.E.2d 360, 2003 N.C. App. LEXIS 1254 (2003).

Robbery defendant's double jeopardy rights were violated because the fact that the bank's money was obtained from two tellers did not allow the State to indict defendant for two separate armed robberies. State v. Becton, — N.C. App. —, 594 S.E.2d 143, 2004 N.C. App. LEXIS 419 (2004).

Double Jeopardy Shown in Assault Convictions and Sentences. — Defendant could not be convicted and sentenced for both assault with a deadly weapon with intent to kill inflicting serious injury, pursuant to G.S. 14-32(b), and assault inflicting serious bodily injury, G.S. 14-32.4, for the same conduct without violating the double jeopardy provisions of the United States and North Carolina Constitutions. State v. Ezell, 159 N.C. App. 103, 582 S.E.2d 679, 2003 N.C. App. LEXIS 1418 (2003).

Arrest of Judgment Required. —

Where a defendant was convicted of assault with a firearm on a law enforcement officer and assault with a deadly weapon based on the same conduct, and because assault with a deadly weapon by way of a firearm is necessarily included in the offense of assault with a firearm on a law enforcement officer, a judgment on both assault with a deadly weapon and assault with a firearm on a law enforcement officer could not stand; the assault with a deadly weapon charge should have been arrested by the trial court. State v. Dickens, 162 N.C. App. 632, 592 S.E.2d 567, 2004 N.C. App. LEXIS 269 (2004).

VII. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

B. Public Use.

What is a "public use", etc

In a declaratory judgment action challenging a city's condemnation proceeding for expansion of the city's sewer system, a judgment for the city was proper because the intended use of the condemnation satisfied the public use and public benefit test as all city residents, including the landowners whose property was being condemned, would have the equal right to connect to the expanded sewer system, which was an essential service. Tucker v. City of Kannapolis, 159 N.C. App. 174, 582 S.E.2d 697, 2003 N.C. App. LEXIS 1442 (2003).

XI. ILLUSTRATIVE CASES.

A. Statutes, Proceedings, etc., Upheld.

Zoning Ordinance Upheld. — Where only four residences in the vicinity of property owners' residence were built beyond the property line and where the town building inspector had indicated that in his 16 years on the job, a rear yard setback of seven and a half feet from the property line was required, there was no evidence to suggest "conscious and intentional discrimination" on the part of the town in enforcing its setback ordinance, such that an equal protection violation under U.S. Const. amend. XIV or N.C. Const. art. I, § 19 was

shown; accordingly, the town's zoning ordinance withstood constitutional attack. Prewitt v. Town of Wrightsville Beach, 161 N.C. App. 481, 595 S.E.2d 442, 2003 N.C. App. LEXIS 2192 (2003).

Criminal Statutes. —

Lack of a mens rea element in G.S. 14-269.2 did not offend the equal protection requirements of N.C. Const. art. I, § 19, or U.S. Const. amend. XIV, § 1, because the distinction between those exempt from prosecution under G.S. 14-269.2(g) and those subject to prosecution, despite having no criminal intent, did not violate equal protection, as the statutory exemptions bore a rational relationship to a legitimate governmental interest in that they struck an appropriate balance between the safety of children and the furtherance of education. State v. Haskins, 160 N.C. App. 349, 585 S.E.2d 766, 2003 N.C. App. LEXIS 1792 (2003), appeal dismissed, 357 N.C. 580, 589 S.E.2d 356 (2003).

Sex Offender Registration Requirement. — Detective's testimony that he advised defendant of the registration requirements of G.S. 14-208.11 when defendant initially registered as a sex offender was sufficient to satisfy due process. State v. White, 162 N.C. App. 183, 590 S.E.2d 448, 2004 N.C. App. LEXIS 111 (2004).

Employment Matters. — City officials and city were granted summary judgment on an employee's procedural and substantive due process claims brought pursuant to U.S. Const. amend XIV and N.C. Const. art. I, § 19, where the city had adopted the city manager form of government under G.S. 160A-101(9)(b), the controlling laws for that form of government did not provide a fixed term of employment or termination procedures for police officers, there was no evidence that either the city manager or city ratified alleged statements of an implied employment contract, and as a result, the employee had no property interest in her job. Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

Licensing Requirement for Sale of Preneed Funeral Goods and Services. — Provision of G.S. 90-210.67(a) which prohibited persons from offering or selling preneed funeral contracts without holding a license issued by the North Carolina Board of Mortuary Science was rationally related to the State's need to protect consumers, and the appellate court held that the statute did not violate the substantive due process or equal protection rights of a cemetery owner that was sued by the Board after it learned that the owner was selling preneed caskets without a license. N.C. Bd. of Mortuary Sci. v. Crown Mem. Park, L.L.C., 162 N.C. App. 316, 590 S.E.2d 467, 2004 N.C. App. LEXIS 113 (2004), appeal dismissed, 358 N.C. 235, 595 S.E.2d 154 (2004).

Punitive Damages Cap Not Vague. — G.S. 1D-25 is not unconstitutionally vague because the court can apply the rules of statutory construction to discern a meaning from G.S. 1D-25 that can be uniformly administered. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

Zoning. — Landowner's procedural and substantive due process claims arising from enactment of an invalid amendment to a development ordinance failed on summary judgment; there was no procedural due process violation because the landowner had actual notice prior to a hearing on the amendment, and there was no substantive due process violation because the landowner did not have a vested right under North Carolina law to develop the property. Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

Sec. 20. General warrants.

CASE NOTES

I. General Consideration.
II. Warrantless Searches.
III. Search Warrants.

I. GENERAL CONSIDERATION.

Motion to Suppress Properly Denied. — An anticipatory warrant to search the premises when an intercepted package containing contraband was delivered was properly executed where: (1) the warrant clearly established explicit triggering events on its face which were definable and preordained; (2) although the package was no longer in the house when the search occurred, the package was delivered, accepted, and taken into the house by defendant; (3) the delivery of the package linked the house to criminal activity inside, giving rise to probable cause for the search; and (4) the warrant specifically allowed the officers to search the premises to find and seize cocaine generally and to identify the participants of the crime; thus, a trial court correctly denied defendant's motion to suppress evidence seized pursuant to the anticipatory search warrant. State v. Baldwin, 161 N.C. App. 382, 588 S.E.2d 497, 2003 N.C. App. LEXIS 2203 (2003).

Cited in State v. Barnes, 158 N.C. App. 606, 582 S.E.2d 313, 2003 N.C. App. LEXIS 1232 (2003); Huber v. N.C. State Univ., — N.C. App. —, 594 S.E.2d 402, 2004 N.C. App. LEXIS 569 (2004).

II. WARRANTLESS SEARCHES.

Search of Automobiles and Conveyances. —

When defendant's vehicle was properly subjected to an investigatory stop, and he was observed reaching under his front seat and then exited his vehicle and refused to comply with orders to get back in his car, police could conduct a protective search of the vehicle. State v. Edwards, — N.C. App. —, 595 S.E.2d 213, 2004 N.C. App. LEXIS 728 (2004).

Probable Cause to Stop Defendant's Vehicle. — Where a police officer had probable cause to stop defendant's vehicle and defendant was predisposed to commit the crime, the trial court properly denied defendant's motions to suppress and defendant's motion for a jury instruction on entrapment. State v. Reynolds, 161 N.C. App. 144, 587 S.E.2d 456, 2003 N.C. App. LEXIS 1998 (2003).

Warrantless Search Upheld. —

Trial court properly concluded that a warrantless search conducted after a police officer and a detective entered a hotel room was not illegal where the detective had received information that the occupants of the room possessed drugs, the detective detected and observed behavior by the room's occupants indicative of drug-related criminal activity, and scales similar to those often used by dealers to measure quantities of illegal narcotics were in plain view. State v. Harper, 158 N.C. App. 595, 582 S.E.2d 62, 2003 N.C. App. LEXIS 1278 (2003).

Trial court properly denied defendant's motion to suppress drugs obtained during a warrantless search of his car, as the drugs were found during a search incident to a lawful arrest supported by probable cause after verification of an informant's tip as to the vehicle, the perpetrator, and the location and approximate time of the alleged drug activity. State v. Collins, 160 N.C. App. 310, 585 S.E.2d 481, 2003 N.C. App. LEXIS 1795 (2003), aff'd, 358 N.C. 135, 591 S.E.2d 518 (2004).

Evidence obtained in a warrantless search of defendant's vehicle was admissible where the officer had a reasonable, articulable suspicion to believe that defendant was committing an implied consent offense based on the facts that defendant's car was weaving combined with the unusual hour and the location, in an area near bars, and the search of defendant's car was lawful based on the fact that it was admittedly consensual and not tainted by an unlawful detention. State v. Jacobs, 162 N.C. App. 251, 590 S.E.2d 437, 2004 N.C. App. LEXIS 119 (2004).

Where defendant was suspected of committing two sexual assaults and a third was reported in the area from which defendant was observed traveling at about 4:00 a.m., when it was snowing and no other vehicles were on the road, police had reasonable suspicion of criminal activity allowing them to conduct an investigatory stop of defendant's vehicle, and defendant's expired license plate independently allowed the stop. State v. Edwards, — N.C. App. —, 595 S.E.2d 213, 2004 N.C. App. LEXIS 728 (2004).

III. SEARCH WARRANTS.

Anticipatory Warrant. — Three requirements that must be observed before a search is executed pursuant to an anticipatory search warrant: (1) the anticipatory warrant must set out, on its face, explicit, clear, and narrowly drawn triggering events which must occur before execution may take place; (2) those triggering events, from which probable cause arises, must be (a) ascertainable, and (b) preordained, meaning that the property is on a sure and irreversible course to its destination; and finally, (3) no search may occur unless and until the property does, in fact, arrive at that destination. State v. Baldwin, 161 N.C. App. 382, 588 S.E.2d 497, 2003 N.C. App. LEXIS 2203 (2003).

An anticipatory warrant to search the premises when an intercepted package containing contraband was delivered was properly executed where: (1) the warrant clearly established explicit triggering events on its face which were definable and preordained; (2) although the package was no longer in the house when the search occurred, the package was delivered, accepted, and taken into the house by defendant; (3) the delivery of the package linked the house to criminal activity inside, giving rise to probable cause for the search; and (4) the warrant specifically allowed the officers to search the premises to find and seize cocaine generally and to identify the participants of the crime; thus, a trial court correctly denied defendant's motion to suppress evidence seized pursuant to the anticipatory search warrant. State v. Baldwin, 161 N.C. App. 382, 588 S.E.2d 497, 2003 N.C. App. LEXIS 2203 (2003).

Anticipatory search warrant sufficiently incorporated by reference the attached affidavit, which clearly identified the triggering events required to execute the warrant, and the two documents could be read together to provide the specificity and particularity required under the U.S. Const. amend. IV, N.C. Const. art. I, § 20, and G.S. 15A-246. State v. Carrillo, — N.C. App. —, 595 S.E.2d 219, 2004 N.C. App. LEXIS 707 (2004).

Defendant's Rights Not Violated. — When, after a proper investigatory stop and protective search of defendant's vehicle, money, gloves and headgear from rapes and robberies he had committed were observed in plain view, a magistrate had probable cause to issue warrants to search defendant's home, business, vehicle, and person. State v. Edwards, — N.C. App. —, 595 S.E.2d 213, 2004 N.C. App. LEXIS 728 (2004).

Sec. 21. Inquiry into restraints on liberty.

CASE NOTES

Habeas Corpus Petition Denied. — Prisoner's habeas corpus petition pursuant to N.C. Const. art. I, § 21, was denied; trial counsel did not provide ineffective assistance pursuant to N.C. Const. art. I, § 23 (2003), in relation to a plea bargain, as defendant's attorney considered a possible affirmative defense and properly determined that the defense was unlikely to succeed. Goode v. Warden, — A.2d —, 2003 Conn. Super. LEXIS 2687 (Conn. Super. Ct. Sept. 25, 2003).

Sec. 22. Modes of prosecution.

CASE NOTES

Use of Short-form Indictment. — Court of appeals rejected defendant's argument that the trial court violated his rights under U.S. Const. amends. V, VI, and XIV and N.C. Const. art. I, §§ 19, 22, and 23 by entering a judgment convicting him of felony murder and sentencing him to life imprisonment without parole on the basis of a short-form indictment. State v. Coleman, 161 N.C. App. 224, 587 S.E.2d 889, 2003 N.C. App. LEXIS 2039 (2003).

Applied in State v. Hunt, 357 N.C. 257, 582 S.E.2d 593, 2003 N.C. LEXIS 746 (2003), cert. denied, 539 U.S. 985, 124 S. Ct. 44, 156 L. Ed. 2d 702 (2003); State v. Roache, 358 N.C. 243, 595 S.E.2d 381, 2004 N.C. LEXIS 340 (2004).

Sec. 23. Rights of accused.

CASE NOTES

I. General Consideration.
II. Right to Be Informed of Accusation.
III. Right of Confrontation.
A. In General.
B. Illustrative Cases.
IV. Right to Counsel.
A. In General.
C. Appointment of Counsel for Indigents.
V. Self-incrimination.
B. Confessions.
VI. Witness Fees, Costs, Etc.

I. GENERAL CONSIDERATION.

Right to Fair Trial Abridged by Trial Court's Comments. — Defendant was entitled to a new trial, as the trial court's extraneous comments regarding defense counsel, including a statement to the effect that "13 people" would get sick if defense counsel explored the same point one more time and that defense counsel was acting unethically regarding a witness statement given to police that the defense counsel referred to but which was not admitted into evidence, were improper and suggested the trial court was favoring the State in defendant's assault trial; since the comments were made in front of the jury, defendant was entitled to a new trial on the charge. State v. Brinkley, 159 N.C. App. 446, 583 S.E.2d 335, 2003 N.C. App. LEXIS 1536 (2003).

Trial Court Did Not Deprive the Defendant of a Fair Trial by Denying the Dendant's Motion for a Mistrial. — Defendant was not denied his rights to confrontation, to effective assistance of counsel, to due process, to a jury trial, and to be free from cruel

and unusual punishment when the trial court denied defendant's motion for a mistrial based on the alleged misconduct of a juror; the juror's inadvertent failure to disclose 40-year-old information she had forgotten did not amount to concealment, and the juror demonstrated no bias. State v. Maske, 358 N.C. 40, 591 S.E.2d 521, 2004 N.C. LEXIS 18 (2004).

Cited in State v. Rasmussen, 158 N.C. App. 544, 582 S.E.2d 44, 2003 N.C. App. LEXIS 1219 (2003); State v. Allen, 162 N.C. App. 587, 592 S.E.2d 31, 2004 N.C. App. LEXIS 246 (2004).

II. RIGHT TO BE INFORMED OF ACCUSATION.

When Jeopardy Attaches for Dismissed Charges. — Jeopardy attached with respect to charges dismissed by the State at the close of its evidence. State v. Poston, 162 N.C. App. 642, 591 S.E.2d 898, 2004 N.C. App. LEXIS 260 (2004).

Relationship of Dates of Alleged Offenses Listed in Indictment to Double Jeopardy. — If, as the general rule provides, the date of an offense is not material, then the critical issue is whether there is an indictment for each alleged offense; when there is a corresponding number of indictments and offenses, then double jeopardy would only be a concern if the dates on the indictment are material. State v. Poston, 162 N.C. App. 642, 591 S.E.2d 898, 2004 N.C. App. LEXIS 260 (2004).

Relationship of Dates of Alleged Offenses Listed in Indictment to Double Jeopardy. — Absent evidence of the same number of incidents as indictments, time would have a most important effect upon the punishment, because a defendant will have received two consecutive terms of imprisonment for identical offenses based upon the same act, in violation of defendant's Fifth Amendment right not to be twice tried for the same offense. State v. Poston, 162 N.C. App. 642, 591 S.E.2d 898, 2004 N.C. App. LEXIS 260 (2004).

Aggravating Circumstances of Capital Offense Need Not be Alleged. —

State-court murder indictments are not required to allege the aggravating circumstances to be presented against capital defendants. State v. Hunt, 357 N.C. 257, 582 S.E.2d 593, 2003 N.C. LEXIS 746 (2003), cert. denied, 539 U.S. 985, 124 S. Ct. 44, 156 L. Ed. 2d 702 (2003).

III. RIGHT OF CONFRONTATION.

A. In General.

Bailiff's Communication with Jurors. — Defendant who was charged with murder and armed robbery was not denied his rights under the Confrontation Clause of the North Carolina Constitution, N.C. Const. art. I, § 23, because the trial court told the bailiff to remind that jurors that they were not to discuss the case with anyone while the jury was not deliberating, and the bailiff gave that instruction while defendant was not present. State v. Coleman, 161 N.C. App. 224, 587 S.E.2d 889, 2003 N.C. App. LEXIS 2039 (2003).

B. Illustrative Cases.

State Violated Confrontation Clause Requirement Where Good Faith Efforts Were Not Shown. — In a capital murder case, defendant's confrontation rights were violated where there was insufficient evidence to support a conclusion that the State employed good-faith efforts to contact and produce a witness at sentencing. State v. Nobles, 357 N.C. 433, 584 S.E.2d 765, 2003 N.C. LEXIS 830 (2003).

Violation of Confrontation Clause Was Not Shown. —

Defendant's confrontation rights under N.C. Const. art. I, § 23 were not violated when the trial court refused to allow defendant to cross-examine the witness about the witness's disciplinary record, as there were confidentiality concerns about the record pursuant to G.S. 115C-402, and defendant failed to show how the disciplinary record was relevant to impeach the witness's credibility under G.S. 8C-1, Rule 608(b). State v. Oliver, 159 N.C. App. 451, 584 S.E.2d 86, 2003 N.C. App. LEXIS 1494 (2003).

IV. RIGHT TO COUNSEL.

A. In General.

Ineffective Representation Not Shown. —

Prisoner's habeas corpus petition pursuant to N.C. Const. art. I, § 21, was denied; trial counsel did not provide ineffective assistance pursuant to N.C. Const. art. I, § 23 (2003), in relation to a plea bargain, as defendant's attorney considered a possible affirmative defense and properly determined that the defense was unlikely to succeed. Goode v. Warden, — A.2d —, 2003 Conn. Super. LEXIS 2687 (Conn. Super. Ct. Sept. 25, 2003).

Defendant did not receive ineffective assistance of counsel for counsel's failure to request jury instructions where it was determined that the trial court did not commit error in failing to instruct the jury on those offenses; moreover, defendant was acquitted on two of the five charges submitted to the jury, so he was not prejudiced by counsel's performance. State v. Dickens, 162 N.C. App. 632, 592 S.E.2d 567, 2004 N.C. App. LEXIS 269 (2004).

Defendant's contention that he received ineffective assistance of counsel when his counsel moved for a mistrial as opposed to a new trial or appropriate relief after the jury had already returned its verdict failed where defendant

failed to show any prejudice resulting from counsel's failure to make the proper motion. State v. Banks, — N.C. App. —, 591 S.E.2d 917, 2004 N.C. App. LEXIS 257 (2004), cert. denied, 358 N.C. 377, 597 S.E.2d 767 (2004).

Counsel Not Ineffective for Failing to File Motion to Dismiss. — Defendant's conviction of robbery with a dangerous weapon, G.S. 14-87, was affirmed because defendant did not receive ineffective assistance of counsel based on a failure to move to dismiss the charge; the evidence was sufficient to support the charge, because the evidence established that defendant used a box cutter, which was classified as a dangerous weapon, and that the victim believed that his life was being threatened. State v. Pratt, 161 N.C. App. 161, 587 S.E.2d 437, 2003 N.C. App. LEXIS 1979 (2003).

C. Appointment of Counsel for Indigents.

Court Did Not Err in Refusing to Allow Defendant Represented by Appointed Counsel to Make Pro Se Closing Argument. — Trial court did not err when it refused to let defendant, who was represented by appointed counsel, make a closing argument to the jury. State v. Forrest, — N.C. App. —, 596 S.E.2d 22, 2004 N.C. App. LEXIS 827 (2004).

V. SELF-INCRIMINATION.

B. Confessions.

Confession Held Voluntary. —

Trial court properly denied defendant's motion to suppress incriminating statements he made to law enforcement, and properly admitted those statements at trial, as none of the tactics that defendant cited that were used by the detectives who questioned him rendered his confession involuntary or made his statements to police subsequently inadmissible. State v. Maniego, — N.C. App. —, 594 S.E.2d 242, 2004 N.C. App. LEXIS 580 (2004).

VI. WITNESS FEES, COSTS, ETC.

Appointment Fee Under G.S. 7A-455.1. — Plain language of N.C. Const. art. I, § 23, prohibiting the assessment of costs against acquitted defendants, encompasses the appointment fee provided for by G.S. 7A-455.1(a); by requiring payment of the appointment fee by acquitted defendants, the general assembly devised a statutory framework that does not comport with the constitutional limitation prohibiting a criminal defendant from paying costs unless found guilty, and as such it may not stand. Accordingly, the appointment fee set out in § 7A-455.1 is a cost of prosecution and may not be imposed upon a defendant in a criminal matter until that defendant has been convicted or pled guilty or nolo contendere. State v. Webb, 358 N.C. 92, 591 S.E.2d 505, 2004 N.C. LEXIS 5 (2004).

G.S. 7A-455.1(b), which required payment of the appointment fee regardless of the outcome of the proceedings was severed in order to allow the State to assess the appointment fee against convicted defendants as constitutionally allowed under N.C. Const. art. I, § 23; G.S. 7A-455.1(a), requiring payment at the time of the appointment was also severed, as it was inconsistent with the ruling that the appointment fee was a cost, and as pursuant to G.S. 7A-304(a), costs, including the pretrial release services fee under G.S. 7A-304(a)(5) and and the North Carolina State Bureau of Investigation laboratory fee under G.S. 7A-304(a)(7), were assessed only after a defendant was convicted or entered a plea of guilty or nolo contendere. State v. Webb, 358 N.C. 92, 591 S.E.2d 505, 2004 N.C. LEXIS 5 (2004).

G.S. 7A-455.1 is unconstitutional because the portion of the appointment fee under G.S. 7A-455.1(a) that is paid to the North Carolina Indigent Persons' Attorney Fee Fund does not fall within the definition of "fees" since it is not directly related to the individual defendant who is resisting prosecution or defending against a particular criminal charge, but helps support that part of the criminal justice system that enables the State constitutionally to prosecute indigent defendants who qualify for court-appointed counsel; N.C. Const. art. I, § 23 does not insulate acquitted defendants from bearing the burden of paying for their own counsel, but it does shield an acquitted defendant from having to pay for a system designed to reimburse the State for expenses necessarily incurred in the conduct of the prosecution. State v. Webb, 358 N.C. 92, 591 S.E.2d 505, 2004 N.C. LEXIS 5 (2004).

Inclusion of virtually identical language to former N.C. Const. art. I, § 11 in N.C. Const. art. I, § 23 convincingly demonstrates North Carolina's continuing dedication to the principle that acquitted defendants should not be required to pay the costs of their prosecution; thus, requiring acquitted defendants to pay the appointment fee under G.S. 7A-455.1, which was a cost of prosecution, would defeat the intent and purpose of either Constitution's provision. State v. Webb, 358 N.C. 92, 591 S.E.2d 505, 2004 N.C. LEXIS 5 (2004).

Sec. 24. Right of jury trial in criminal cases.

Legal Periodicals. —

For article, "The Constitutional Tension Between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions

and the Quality of Justice in Juvenile Courts," see 38 Wake Forest L. Rev. 1111 (2003).

CASE NOTES

I. In General.
II. Unanimous Verdict of Twelve.

I. IN GENERAL.

Juror Misrepresentation Did Not Deny Defendant Right to Trial by Impartial Jury. — Defendant was not denied his rights to confrontation, to effective assistance of counsel, to due process, to a jury trial, and to be free from cruel and unusual punishment when the trial court denied defendant's motion for a mistrial based on the alleged misconduct of a juror; the juror inadvertent failure to disclose the 40-year-old information she had forgotten did not amount to concealment, and the juror demonstrated no bias. State v. Maske, 358 N.C. 40, 591 S.E.2d 521, 2004 N.C. LEXIS 18 (2004).

II. UNANIMOUS VERDICT OF TWELVE.

Determination of Ambiguity As to Verdict Unanimity. —

When defendant was charged with 10 counts of statutory rape, the trial court submitted all 10 counts to the jury without differentiating among them, the indictment alleged 10 counts occurring between two dates, without specifying a date for any one charge, and the verdict sheets indicated guilty verdicts without specifying a particular offense, defendant's constitutional right to a unanimous jury verdict was violated because it could not be said that the jury unanimously agreed that defendant committed any particular offense. State v. Holden, 160 N.C. App. 503, 586 S.E.2d 513, 2003 N.C. App. LEXIS 1818 (2003), cert. granted, 358 N.C. 238, 593 S.E.2d 786 (2004).

Submission of an issue to the jury in the disjunctive, etc.

While the evidence presented by the State tended to show that the marijuana weighed 18 pounds, defendant testified that the weight of the box was about six or seven pounds, thus, the evidence could support an inference that defendant possessed and/or transported exactly 10 pounds of marijuana, which did not qualify as trafficking in marijuana under N.C. Gen. Stat. § 90-95(h)(1)(a). Considering the evidence and erroneous jury instructions that the jury should find defendant guilty if it found that he possessed "10 pounds or more but less than 50 pounds" of marijuana, the appellate court could not conclude that the jury unanimously convicted defendant under the conduct proscribed in N.C. Gen. Stat. § 90-95(h)(1)(a). State v. Trejo, — N.C. App. —, 594 S.E.2d 125, 2004 N.C. App. LEXIS 417 (2004).

No Violation of Right to Unanimous Verdict. — When a criminal jury indicated it was having difficulty reaching a verdict, the trial court's request that the jury reveal the numerical split of its vote was not a per se violation of defendant's right to a unanimous verdict, under N.C. Const. art. I, § 24, when the trial court made it clear that it did not desire to know whether the majority was for conviction or acquittal. State v. Rasmussen, 158 N.C. App. 544, 582 S.E.2d 44, 2003 N.C. App. LEXIS 1219 (2003).

Sec. 25. Right of jury trial in civil cases.

CASE NOTES

I. In General.
II. Specific Proceedings.

I. IN GENERAL.

Cap on Punitive Damages. —

Although N.C. Const. art. I, § 25 appears to embody a broad definition of the term ""property," a controversy in which punitive damages are assessed is not one which enforces a plaintiff's legal rights and, therefore, does not respect property; thus, G.S. 1D-25 in no way infringes upon plaintiffs' right to a trial by jury under N.C. Const. art. 1, § 25. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

II. SPECIFIC PROCEEDINGS.

No Right to Jury Trial In Action to Determine Attorneys' Fees Under Quantum Meruit. — Trial court did not err in denying a law firm's request for a jury trial on the reasonable value of the attorneys who had provided legal services for a client under a contingency fee agreement and who were then discharged

by the client under N.C. Const. art. I, § 25 and N.C. Const. art. IV, § 13; until adoption of the modern rule, clients had no right to unilaterally discharge an attorney and force him to pursue a quantum meruit claim, and the right to a jury trial under N.C. Const. art. I, § 25 was guaranteed only in cases in which the right and the remedy were in existence when the North Carolina Constitution of 1868 was adopted. Guess v. Parrott, 160 N.C. App. 325, 585 S.E.2d 464, 2003 N.C. App. LEXIS 1798 (2003).

Sec. 26. Jury service.

CASE NOTES

Peremptory Challenges Upheld. — Defendant's Batson challenge to the jury, under principles of racial discrimination, gender discrimination, and racial-gender discrimination combined, were carefully evaluated under the various prongs of Batson and found not to have violated U.S. Const. amend. VI and N.C. Const. art. I, § 26, where the trial court found that defendant established a prima facie case that the peremptory challenges were exercised on the basis of race, but thereafter, the prosecutor's reasons were found to be racially neutral; the court found no purposeful discrimination in the challenges made by the prosecutor, and challenges to the other forms of discriminatory challenge lacked merit because there was insufficient proof that a cognizable group had been singled out for exclusion. State v. Wiggins, 159 N.C. App. 252, 584 S.E.2d 303, 2003 N.C. App. LEXIS 1502 (2003).

Adequacy of Record. — Defendant's Batson challenge, which alleged discrimination in the exercise of peremptory challenges in violation of N.C. Const. art. I, § 26, was denied, because the record did not reconstruct jury selection in sufficient detail to enable the appellate court to conduct appellate review of the trial court's determination that defendant failed to make a prima facie showing of race and gender discrimination in the prosecutor's exercise of peremptory challenges. State v. Shelman, 159 N.C. App. 300, 584 S.E.2d 88, 2003 N.C. App. LEXIS 1533 (2003), cert. denied, 357 N.C. 581, 589 S.E.2d 363 (2003).

Sec. 27. Bail, fines, and punishments.

CASE NOTES

I. In General.

I. IN GENERAL.

Right Not Compromised. — Defendant was not denied his rights to confrontation, to effective assistance of counsel, to due process, to a jury trial, and to be free from cruel and unusual punishment when the trial court denied defendant's motion for a mistrial based on the alleged misconduct of a juror; the juror inadvertent failure to disclose the 40-year-old information she had forgotten did not amount to concealment, and the juror demonstrated no bias. State v. Maske, 358 N.C. 40, 591 S.E.2d 521, 2004 N.C. LEXIS 18 (2004).

Sec. 35. Recurrence to fundamental principles.

CASE NOTES

Cited in Seaton v. Owens, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 22298 (M.D.N.C. Dec. 8, 2003).

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

Rate Freeze Statute Proper Exercise of Legislative Power. — Enactment of G.S. 62-133.6 was an exercise by the legislature of the power granted to it under the North Carolina Constitution to alter electricity rates for investor-owned utilities for the next five years while the utilities seek to comply with new air emission standards, and simply allows the legislature to preempt the North Carolina Utilities Commission's ability to compel a general rate case by freezing rates until 31 December 2007; the North Carolina Utilities Commission properly dismissed a complaint regarding rates and a petition to initiate a general rate proceeding filed against an energy corporation by a customers association. State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, — N.C. App. —, 592 S.E.2d 221, 2004 N.C. App. LEXIS 253 (2004).

Sec. 3. Senate districts; apportionment of Senators.

CASE NOTES

2002 Legislative Redistricting Plans. — The North Carolina legislature's 2002 revised redistricting plans were constitutionally deficient in numerous instances; the plans failed to attain strict compliance with the legal requirements set forth in Stephenson I and were unconstitutional. Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247, 2003 N.C. LEXIS 745 (2003).

Cited in Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Sec. 5. Representative districts; apportionment of Representatives.

CASE NOTES

2002 Legislative Redistricting Plans. — The North Carolina legislature's 2002 revised redistricting plans were constitutionally deficient in numerous instances; the plans failed to attain strict compliance with the legal requirements set fort in Stephenson I and were unconstitutional. Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247, 2003 N.C. LEXIS 745 (2003).

Cited in Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

ARTICLE IV

JUDICIAL

Section 1. Judicial power.

CASE NOTES

Constitution Shields Judicial Branch from Legislative Interference So Far as Its Inherent Rights and Powers. — Pursuant to N.C. Const. art. I, § 6 and N.C. Const. art. IV, § 1, the North Carolina Constitution shields the judicial branch from legislative interference, so far at least as its inherent rights and powers are concerned. Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1, 2004 N.C. LEXIS 193 (2004).

Three-Judge Panel for Redistricting Challenges Does Not Infringe on Chief Justice's Authority. — Three-judge panel of superior court judges required by G.S. 1-267.1 is not a new court outside of the contemplation of N.C. Const. art. IV, §§ 12 and 13(2), as a challenge to redistricting is a matter of procedure that lies within the purview of the General Assembly; accordingly, no new courts are created beyond those contemplated by N.C. Const. art. IV, §§ 1, 2. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Division of Motor Vehicle's Action Violated Separation of Powers Doctrine. — North Carolina Division of Motor Vehicles violated the separation of powers clause in the North Carolina Constitution and violated a driver's right to due process when it unilaterally voided a district court ordered limited driving privilege to a driver; furthermore, by allowing the North Carolina Division of Motor Vehicles to, in essence, invalidate a properly entered court order, G.S. 20-179.3(k), it violated the provisions requiring separation of powers contained in N.C. Const. art. I, § 6; N.C. Const. art. IV, § 1; and N.C. Const. art. IV, § 3. State v. Bowes, 159 N.C. App. 18, 583 S.E.2d 294, 2003 N.C. App. LEXIS 1439 (2003).

Sec. 2. General Court of Justice.

CASE NOTES

Three-Judge Panel for Redistricting Challenges Held Constitutional. — Three-judge panel of superior court judges required by G.S. 1-267.1 is not a new court outside of the contemplation of N.C. Const. art. IV, §§ 12 and 13(2), as a challenge to redistricting is a matter of procedure that lies within the purview of the General Assembly; accordingly, no new courts are created beyond those contemplated by N.C. Const. art. IV, §§ 1, 2. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Sec. 3. Judicial powers of administrative agencies.

CASE NOTES

Division of Motor Vehicle's Action Violated Separation of Powers Doctrine. — North Carolina Division of Motor Vehicles violated the separation of powers clause in the North Carolina Constitution and violated a driver's right to due process when it unilaterally voided a district court ordered limited driving privilege to a driver; furthermore, by allowing the North Carolina Division of Motor Vehicles to, in essence, invalidate a properly entered court order, G.S. 20-179.3(k), it violated the provisions requiring separation of powers contained in N.C. Const. art. I, § 6; N.C. Const. art. IV, § 1; and N.C. Const. art. IV, § 3. State v. Bowes, 159 N.C. App. 18, 583 S.E.2d 294, 2003 N.C. App. LEXIS 1439 (2003).

Sec. 10. (Effective January 1, 2005, contingent upon certification of approval of constitutional amendment) District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in

Art. IV, § 10 is set out twice. See notes.

the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly. (2004-128, s. 16.)

Section Set Out Twice. — The section above is effective January 1, 2005, contingent upon certification of approval of constitutional amendment. For the section as in effect until January 1, 2005, see the main volume.

Editor's Note. — Session Laws 2004-128, ss. 17 and 18, provide: "SECTION 17. The amendment set out in Section 16 of this act shall be submitted to the qualified voters of the State at the general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

'[ ] FOR [ ] AGAINST

"Constitutional amendment to provide for the first term of office for magistrates of the General Court of Justice to be two years and for subsequent terms to be four years.'

"SECTION 18. If a majority of the votes cast on the question are in favor of the amendment set out in Section 16 of this act, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective January 1, 2005."

Section Laws 2004-128, s. 20, provides that s. 19 of the act becomes effective January 1, 2005, but only upon voter approval of the constitutional amendment to N.C. Const. art. IV, § 10, proposed in s. 16 of the act, and is applicable to appointments that take effect after January 1, 2005.

Effect of Amendments. — Session Laws 2004-128, s. 16, deleted "for a term of two years" after "shall appoint" in the sixth sentence; added the seventh sentence; and added "unless otherwise provided by the General Assembly" at the end of the last sentence. See editor's notes for contingent effective date and applicability.

Sec. 11. Assignment of Judges.

CASE NOTES

Three-Judge Panel for Redistricting Challenges Does Not Infringe on Chief Justice's Authority. — The provisions of G.S. 1-267.1, within the specific context of a challenge to redistricting, do not impermissibly infringe on the Chief Justice's authority to assign judges, pursuant to his powers under N.C. Const. art. IV, § 11. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Sec. 12. Jurisdiction of the General Court of Justice.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Jurisdiction of District Courts. — Appeal procedures in G.S. 7A-272(d) prevail over the general rule of G.S. 15A-1347; therefore, after defendant's felony probation was revoked in district court, defendant was allowed to appeal the case to the North Carolina Court of Appeals instead of a superior court. State v. Hooper, 158 N.C. App. 654, 582 S.E.2d 331, 2003 N.C. App. LEXIS 1223 (2003).

Review of Attorney Disciplinary Proceedings. — The Court of Appeals of North Carolina lacked jurisdiction to hear the State Bar of North Carolina's appeal of a grant of summary judgment to an attorney in a disciplinary proceeding because G.S. 84-28(h) provided no appeal from a final order that did not impose discipline, and in the instant case, no discipline had been imposed. N.C. State Bar v. Rudisill, 159 N.C. App. 704, 583 S.E.2d 413, 2003 N.C. App. LEXIS 1527 (2003).

Jurisdiction over a District Court's Revocation of Probation. — When a district

court revokes a defendant's probation, that defendant's appeal is to the superior court rather than the Court of Appeals of North Carolina; thus, G.S. 15A-1347, rather than G.S. 7A-272(d), governed defendant's appeal of a probation revocation and the court of appeals lacked jurisdiction to hear the appeal. State v. Hooper, 358 N.C. 122, 591 S.E.2d 514, 2004 N.C. LEXIS 12 (2004).

Three-Judge Panel for Redistricting Challenges Held Constitutional. — Three-judge panel of superior court judges required by G.S. 1-267.1 is not a new court outside of the contemplation of N.C. Const. art. IV, §§ 12 and 13(2), as a challenge to redistricting is a matter of procedure that lies within the purview of the General Assembly; accordingly, no new courts are created beyond those contemplated by N.C. Const. art. IV, §§ 1, 2. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Applied in Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Cited in State v. Jones, 161 N.C. App. 60, 588 S.E.2d 5, 2003 N.C. App. LEXIS 1984 (2003), cert. granted, 357 N.C. 660, 589 S.E.2d 882 (2003); State v. Hunt, 357 N.C. 257, 582 S.E.2d 593, 2003 N.C. LEXIS 746 (2003), cert. denied, 539 U.S. 985, 124 S. Ct. 44, 156 L. Ed. 2d 702 (2003).

Sec. 13. Forms of action; rules of procedure.

CASE NOTES

I. General Consideration.
II. Civil Actions.

I. GENERAL CONSIDERATION.

Three-Judge Panel for Redistricting Challenges Held Constitutional. — Three-judge panel of superior court judges required by G.S. 1-267.1 is not a new court outside of the contemplation of N.C. Const. art. IV, §§ 12 and 13(2), as a challenge to redistricting is a matter of procedure that lies within the purview of the General Assembly; accordingly, no new courts are created beyond those contemplated by N.C. Const. art. IV, §§ 1, 2. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Setting Particular Venue for Challenges to Redistricting Held Constitutional. — Supreme Court of North Carolina found no constitutional bar under N.C. Const. art. IV, § 13(2) to the General Assembly's setting venue for redistricting challenges in the county where the capital of North Carolina is located, pursuant to G.S. 1-81.1; the court found that the provision did not affect jurisdiction, but instead, it merely established venue for challenges to redistricting. Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112, 2004 N.C. LEXIS 312 (2004).

Cited in State v. Sinnott, — N.C. App. —, 593 S.E.2d 439, 2004 N.C. App. LEXIS 370 (2004); Holland v. Heavner, — N.C. App. —, 595 S.E.2d 224, 2004 N.C. App. LEXIS 662 (2004).

II. CIVIL ACTIONS.

No Right to Jury Trial in Action Seeking Attorneys' Fees Under Quantum Meruit. — Trial court did not err in denying a law firm's request for a jury trial on the reasonable value of the attorneys who had provided legal services for a client under a contingency fee agreement and who were then discharged by the client under N.C. Const. art. I, § 25 and N.C. Const. art. IV, § 13; until adoption of the modern rule, clients had no right to unilaterally discharge an attorney and force him to pursue a quantum meruit claim, and the right to a jury trial under N.C. Const. art. I, § 25 was guaranteed only in cases in which the right and the remedy were in existence when the North Carolina Constitution of 1868 was adopted. Guess v. Parrott, 160 N.C. App. 325, 585 S.E.2d 464, 2003 N.C. App. LEXIS 1798 (2003).

ARTICLE V

FINANCE

Section 1. No capitation tax to be levied.

CASE NOTES

Cited in State v. Sinnott, — N.C. App. —, 593 S.E.2d 439, 2004 N.C. App. LEXIS 370 (2004).

Sec. 2. State and local taxation.

Legal Periodicals. —
For note, "Will North Carolina Vouch for Zelman? Examining the Constitutionality of School Vouchers in North Carolina in the Wake of Zelman v. Simons-Harris," see 81 N.C.L. Rev. 2419 (2003).

ARTICLE IX

EDUCATION

Sec. 6. State school fund.

Legal Periodicals. —
For note, "Will North Carolina Vouch for Zelman? Examining the Constitutionality of School Vouchers in North Carolina in the Wake of Zelman v. Simons-Harris," see 81 N.C.L. Rev. 2419 (2003).

Sec. 7. (Effective until January 1, 2005, contingent upon certification of approval of Constitutional amendment — see note) County school fund.

Legal Periodicals. —
For note, "Will North Carolina Vouch for Zelman? Examining the Constitutionality of School Vouchers in North Carolina in the Wake of Zelman v. Simons-Harris," see 81 N.C.L. Rev. 2419 (2003).

CASE NOTES

This Section Requires Legislation to Give It Effect. — G.S. 115C-457.1, which created the civil penalty fund, is consistent with the intent and purpose of N.C. Const. art. IX, § 7 that civil penalties be used exclusively to support the State's public schools; because art. IX, § 7 fails to unambiguously specify how that is to be accomplished, it requires legislation to give it effect, and G.S. 115C-457.1 properly articulates the necessary details to effect the constitutional purpose. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Use of Assessments. — While the court concluded that the assessments made pursuant to G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306 constituted monetary payments which, although levied in a civil setting, were penal in nature, the assessments did not accrue to the state; therefore, the "civil penalties" assessed a city pursuant to the ordinance were not subject to the requirements N.C. Const. art. IX, § 7, and therefore the school board's motion for summary judgment on the issue was denied. In denying the school board's motion, the court responded to its request for a declaratory ruling as to whether the fines and other amounts received by the city and the other defendants under the statute and the ordinance had to be paid to the school board; such assessments were not required to be appropriated and used exclusively for maintaining free public schools in the county. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Trial court correctly applied the three-year limitations period of G.S. 1-52, rather than the one-year statute of limitations contained in G.S. 1-54(2), to action by the North Carolina School Boards Association and several boards of education for a declaratory judgment that various monetary payments collected by state agencies were subject to N.C. Const. art. IX, § 7; although G.S. 1-54(2) had been applied to actions commenced by the State upon a statute to collect civil penalties or forfeitures, G.S. 1-54(2) was not applicable in the case at bar because the school boards sought to recover payments provided to the public schools by N.C. Const. art. IX, § 7, and those payments had already been collected by the State. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Payments collected by the North Carolina Plumbing and Heating Board, the North Carolina Electrical Board, the North Carolina Cosmetic Board, and the North Carolina State Bar for late renewal of occupational licenses or late payment of license fees are remedial in nature and therefore not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Standing to Sue. — An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a challenge to the statute and the ordinance based on N.C. Const. art. IX, § 7; he did not, however, have standing to bring this claim, as he did not allege that (1) there had been a demand on and refusal by the proper authorities to institute proceedings for the protection of the interests of the political agency or political subdivision; or (2) a demand on such authorities would have been useless. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Civil Penalties That Do Not Accrue to the State. — An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a challenge to the statute and the ordinance based on N.C. Const. art. IX, § 7; while the court concluded that the assessments in question constituted monetary payments which, although levied in a civil setting, were penal in nature, the assessments did not accrue to the state. Therefore, the "civil penalties" assessed the city pursuant to its ordinance were not subject to the requirements of N.C. Const. art. IX, § 7. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Payments collected as penalties under the Employment Security Act are "additional taxes" and thus remedial, rather than punitive, in nature; accordingly, payments collected by the Employment Security Commission pursuant to G.S. 96-10 are not subject to N.C. Const. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Proceeds of penalties that are collected for violation of campus traffic and parking ordinances as "infractions" under G.S. 116-44.4(g) are subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

"Civil penalties" imposed by G.S. 116-44.4(h), which are intended to compensate campuses for the expense of establishing and maintaining parking-and transportation-related services, are remedial in nature and thus are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Because the North Carolina General Assembly enacted G.S. 116-44.4 pursuant to a clear grant of constitutional authority to establish a mechanism for administering the "maintenance and management" of traffic and parking on each University of North Carolina campus, G.S. 116-44.4 is constitutional under N.C. Const. art. IX, § 8, which is a co-equal provision with N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Broad authority granted to University of North Carolina (UNC) campus trustees under G.S. 116-33, including the authority to assess fines for the loss, damage, or late return of campus library materials, is intended to promote the remedial purpose of keeping the cost of an education at the several UNC campuses as low as possible; because G.S. 116-33 advances this remedial purpose, the statute is constitutional under N.C. Const. art. IX, § 9, which is a co-equal provision with N.C. Const. art. IX, § 7. Thus, the clear proceeds of payments collected pursuant to G.S. 116-33 are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Purpose of G.S. 105-113.105 through 105-113.113 is to levy an excise tax to generate revenue for state and local law enforcement agencies and for the General Fund, which is a remedial purpose; payments collected under G.S. 105-113.105 thus are not subject to N.C. Const. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Payments by an environmental violator to support a supplemental environmental project as part of a settlement agreement are still paid because of a civil penalty assessed

against the environmental violator; as such, they are punitive in nature and therefore subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Payments collected by state agencies as fines or civil penalties assessed against a public school or local school administrative unit need not be remitted to the Civil Penalty Fund but may instead remain with the collecting State agency, where they may be used for purposes other than maintaining public schools; if payments collected as civil penalties from public schools were subject to N.C. Const. art. IX, § 7, the offending unit would receive back from the School Technology Fund a portion of the fine or penalty assessed against the unit and thus would be unjustly enriched by its own wrongdoing in the sense that it would retain the use of money that would otherwise have been entirely paid to a State agency. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Payments authorized by G.S. 20-118(e) are punitive in nature and are therefore subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

G.S. 105-267 did not preclude action by the North Carolina School Boards Association and several boards of education for a declaratory judgment that various monetary payments collected by state agencies were subject to N.C. Const. art. IX, § 7; school boards did not owe any taxes, and their claims against the North Carolina Secretary of Revenue were not brought for the purpose of preventing the collection of any tax but instead to determine the proper disposition of amounts collected by the North Carolina Department of Revenue as statutorily-denominated "penalties" or "additional taxes." N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Payments authorized by G.S. 20-309(e) are in the nature of sanctions and are thus subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Penalties assessed as an additional tax under G.S. 105-236 and other provisions of the North Carolina Revenue Act for failure to comply with the tax code are remedial, not punitive, and are thus not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Sec. 7. (Effective January 1, 2005, contingent upon certification of approval of constitutional amendment — see notes) County school fund; State fund for certain moneys.

Legal Periodicals. — For note, "Will North Carolina Vouch for Zelman? Examining the Constitutionality of School Vouchers in North Carolina in the Wake of Zelman v. Simons-Harris," see 81 N.C.L. Rev. 2419 (2003).

Sec. 8. Higher education.

CASE NOTES

Because the North Carolina General Assembly enacted G.S. 116-44.4 pursuant to a clear grant of constitutional authority to establish a mechanism for administering the "maintenance and management" of traffic and parking on each University of North Carolina campus, G.S. 116-44.4 is constitutional under N.C. Const. art. IX, § 8, which is a co-equal provision with N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

Sec. 9. Benefits of public institutions of higher education.

CASE NOTES

Broad authority granted to University of North Carolina (UNC) campus trustees under G.S. 116-33, including the authority to assess fines for the loss, damage, or late return of campus library materials, is intended to promote the remedial purpose of keeping the cost of an education at the several UNC campuses as low as possible; because G.S. 116-33

advances this remedial purpose, the statute is constitutional under N.C. Const. art. IX, § 9, which is a co-equal provision with N.C. Const. art. IX, § 7. Thus, the clear proceeds of payments collected pursuant to G.S. 116-33 are not subject to N.C. Const. art. IX, § 7. N.C. Sch. Bds. Ass'n v. Moore, 160 N.C. App. 253, 585 S.E.2d 418, 2003 N.C. App. LEXIS 1794 (2003).

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Sections Added, Amended or Repealed 2004 Session

This table lists the sections of the General Statutes of North Carolina which were added, amended or repealed during the 2004 legislative session of the General Assembly.

In instances where the effective date of an act has been postponed beyond January 1, 2005, the effective date of such act is indicated in the right-hand column.

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1-47	Amended	203	15	
1-52	Amended	203	15	
1-81.1	Added	434	11	
1-267.1	Added	434	7	
7A-16	Amended	203	16	
7A-41	Amended	124	14.6	
7A-41	Amended	127	2	
7A-45.1	Amended	124	14.6	
7A-60	Amended	124	14.6	
7A-69	Amended	124	14.7	
7A-101	Amended	124	31.5	
7A-102	Amended	124	31.6	
7A-133	Amended	124	14.1	
7A-133	Amended	124	14.6	
7A-171	Amended	128	19	7/1/05
7A-171.1	Amended	124	31.7	
7A-210	Amended	128	1	
7A-271	Amended	128	2	
7A-304	Amended	186	4.4	
7A-305	Amended	186	4.3	
7A-311	Amended	113	1	
7A-314.1	Added	110	7.1	
7A-474.16	Added	186	4.1	
7A-474.17	Added	186	4.1	
7A-474.18	Added	186	4.1	
7A-474.19	Added	186	4.1	
7A-474.20	Added	186	4.1	
7A-498.7	Amended	124	14.4	7/1/05
7A-775	Amended	196	1	
7B-402	Amended	128	11	
7B-406	Amended	128	12	
7B-808	Amended	203	17	
7B-1103	Amended	128	13	
7B-1104	Amended	128	14	
7B-1302	Amended	124	7.33	
7B-1402	Amended	186	5.1	
7B-1800	Amended	155	1	
8C-1-413	Added	149	3.1	
8-53.1	Amended	186	16.2	
8-53.5	Amended	203	18	

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14-27.3	Amended	128	8	
14-32.4	Amended	186	9.1	
14-33	Amended	26	1	
14-33	Amended	199	7	
14-33.2	Amended	186	10.1	
14-202	Amended	109	7	
14-202.4	Amended	203	19	
14-208.6	Amended	109	8	
14-226	Amended	128	15	
14-269.2	Amended	198	1	
14-269.2	Amended	198	2	
14-269.2	Amended	198	3	
14-298	Amended	199	47	
14-298	Amended	203	20	
14-401.5	Repealed	203	21	
14-401.17	Amended	60	3	
14-401.21	Amended	124	10.2F	
14-402	Amended	183	1	
14-402	Amended	203	1	
14-415.1	Amended	186	14.1	
15A-145	Amended	133	1	
15A-304	Amended	186	15.1	
15A-401	Amended	186	13.1	
15A-501	Amended	154	11	
15A-902	Amended	154	3	
15A-903	Amended	154	4	
15A-904	Amended	154	5	
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15A-907	Amended	154	7	
15A-908	Amended	154	8	
15A-910	Amended	154	9	
15A-959	Amended	154	10	
15A-1340.11	Amended	128	3	
15A-1340.16D	Added	178	8	
15A-1340.16	Amended	178	2	
15A-1340.16	Amended	186	8.1	
15A-1343	Amended	186	1.1	
15A-1382.1	Added	186	11.1	
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15B-2	Amended	124	18.1	
15B-2	Amended	159	1	
15B-3	Amended	159	1	
15B-4	Amended	159	1	
15B-5	Amended	159	1	
15B-6	Amended	159	1	
15B-7	Amended	159	1	
15B-8	Amended	159	1	
15B-8.1	Amended	159	1	
15B-9	Amended	159	1	
15B-10	Amended	159	1	
15B-11	Amended	159	1	
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15B-13	Amended	159	1	
15B-14	Amended	159	1	

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15B-19	Amended	159	1	
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15B-24	Amended	159	1	
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15B-30	Added	159	2	
15B-31	Added	159	2	
15B-32	Added	159	2	
15B-33	Added	159	2	
15B-34	Added	159	2	
15B-35	Added	159	2	
15B-36	Added	159	2	
15B-37	Added	159	2	
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18B-103	Amended	199	8	
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18B-603	Amended	199	9	
18B-800	Amended	135	4	
18B-900	Amended	203	25	
18B-903	Amended	203	25	
18B-1001.1	Amended	203	26	
18B-1006	Amended	199	10	
18B-1006	Amended	203	27	
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18B-1006	Amended	203	65	
18B-1101	Amended	135	2	
18B-1101	Amended	199	11	
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20-43.2	Added	189	1	
20-49.1	Added	148	1	
20-49.2	Added	148	2	
20-63	Amended	77	1	
20-63	Amended	79	1	
20-63	Amended	131	1	
20-63	Amended	185	1	
20-64	Amended	167	1	
20-64	Amended	199	59	
20-66	Amended	167	2	
20-66	Amended	167	3	
20-66	Amended	199	59	
20-79	Amended	167	4	
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20-79.4	Amended	131	2	
20-79.4	Amended	182	1	
20-79.4	Amended	185	2	
20-79.4	Amended	200	1	
20-79.7	Amended	124	30.3A	
20-79.7	Amended	131	3	
20-79.7	Amended	131	4	
20-79.7	Amended	185	3	
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20-81.12	Amended	131	5	
20-81.12	Amended	185	5	
20-81.12	Amended	200	4	
20-85	Amended	77	2	
20-85	Amended	185	6	
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20-87	Amended	199	59	
20-88	Amended	167	6	
20-88	Amended	167	7	
20-88	Amended	199	59	
20-94	Amended	167	8	
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20-118	Amended	145	1	
20-118	Amended	145	2	
20-119	Amended	124	30.3E	
20-119	Amended	145	3	
20-130	Amended	82	1	
20-137.1	Amended	191	1	
20-137.1	Amended	191	2	
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20-141.6	Added	193	1	
20-147.1	Amended	199	56	
20-147.1	Added	124	30.6	
20-158	Amended	141	1	
20-158	Amended	141	2	
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20-158	Amended	172	5	
20-160.1	Added	172	1	
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20-183.2	Amended	199	59	

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20-288	Amended	199	59	
20-364	Amended	124	18.3	
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25-2-403	Amended	190	3	
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25-6-102	Repealed	190	1	
25-6-103	Repealed	190	1	
25-6-104	Repealed	190	1	
25-6-105	Repealed	190	1	
25-6-107	Repealed	190	1	
25-6-108	Repealed	190	1	
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25-6-110	Repealed	190	1	
25-6-111	Repealed	190	1	
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32-52	Repealed	139	1	
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32-53	Added	139	2	
32-54	Added	139	2	
32-55	Added	139	2	
32-56	Added	139	2	
32-57	Added	139	2	
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32-61	Added	139	2	
32-62	Added	139	2	
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35A-1251	Amended	199	15	
35A-1290	Amended	203	31	
35A-1291	Amended	203	31	
36A-23.1	Amended	139	4	
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40A-42	Amended	203	33	
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42-42	Amended	143	3	
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42-51	Amended	143	6	
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47C-3-102	Amended	109	2	
47C-3-108	Amended	109	5	
47F-1-102	Amended	109	3	
47F-3-102	Amended	109	4	
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47-53.1	Amended	199	18	
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50B-2	Amended	186	19.1	
50B-3	Amended	186	17.3	
50B-3	Amended	186	17.4	
50B-3	Amended	186	17.5	
50B-3.1	Amended	203	34	
50B-5.5	Added	186	18.1	
50C	Added	194	1	
50C-1	Amended	199	50	
50C-1	Added	194	1	
50C-2	Added	194	1	
50C-3	Added	194	1	
50C-4	Added	194	1	
50C-5	Added	194	1	
50C-6	Added	194	1	
50C-7	Added	194	1	
50C-8	Added	194	1	
50C-9	Added	194	1	
50C-10	Added	194	1	
50C-11	Added	194	1	
50-10	Amended	128	6	
50-13.1	Amended	128	10	
50-13.2	Amended	186	17.1	
53-48	Amended	171	1	
53-67	Amended	171	2	
53-99	Amended	171	3	
53-115	Amended	171	4	
53-160	Amended	171	5	
53-208.12	Amended	171	6	
53-243.02	Amended	171	7	
53-243.05	Amended	171	8	
53-243.06	Amended	171	9	
53-243.11	Amended	171	10	
53-243.12	Amended	171	11	
53-243.12	Amended	171	12	
53-243.12	Amended	171	13	
53-243.16	Amended	171	14	
53-257	Amended	171	15	
53-258	Amended	171	16	
54B-266	Amended	203	35	
54C-200	Amended	203	35	
55B-2	Amended	199	19	
55B-2	Amended	203	4	
58-2-131	Amended	124	21.1	
58-2-133	Amended	124	21.1	
58-2-136	Amended	124	21.1	
58-2-150	Amended	199	20	
58-3-33	Amended	199	21	
58-6-25	Amended	124	21.1	
58-10-20	Amended	199	20	
58-15-30	Amended	203	74	
58-21-65	Amended	199	20	
58-22-20	Amended	199	20	
58-28-5	Amended	166	4	
58-28-45	Amended	166	3	
58-31-66	Amended	203	74	
58-33-46	Amended	166	2	
58-33-82	Amended	199	20	

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58-33-95	Amended	166	1	
58-33-130	Amended	124	21.1	
58-33-133	Amended	124	21.1	
58-36-10	Amended	203	5	
58-36-75	Amended	172	4	
58-36-90	Amended	199	20	
58-36-90	Amended	199	20	
58-36-115	Added	111	1	
58-40-25	Amended	203	5	
58-58-86	Amended	124	32F.1	
58-64-33	Amended	203	36	
58-71-71	Amended	124	21.3	
58-85-1	Amended	199	22	
58-85-15	Amended	199	22	
58-85-20	Amended	199	22	
58-85-25	Amended	199	22	
58-86-55	Amended	124	31.18	
58-87-1	Amended	203	5	
58-89A-1	Amended	162	1	
58-89A-1	Added	162	1	
58-89A-5	Amended	162	1	
58-89A-10	Amended	162	1	
58-89A-15	Amended	162	1	
58-89A-20	Amended	162	1	
58-89A-25	Amended	162	1	
58-89A-30	Amended	162	1	
58-89A-31	Added	162	1	
58-89A-35	Added	162	1	
58-89A-35	Added	162	1	
58-89A-40	Added	162	1	
58-89A-45	Added	162	1	
58-89A-50	Added	162	1	
58-89A-55	Added	162	1	
58-89A-60	Added	162	1	
58-89A-65	Added	162	1	
58-89A-70	Added	162	1	
58-89A-75	Added	162	1	
58-89A-76	Added	162	1	
58-89A-80	Added	162	1	
58-89A-85	Added	162	1	
58-89A-90	Added	162	1	
58-89A-95	Added	162	1	
58-89A-100	Added	162	1	
58-89A-105	Added	162	1	
58-89A-110	Added	162	1	
58-89A-112	Added	162	1	
58-89A-115	Added	162	1	
58-89A-120	Added	162	1	
58-89A-125	Added	162	1	
58-89A-130	Added	162	1	
58-89A-135	Added	162	1	
58-89A-140	Added	162	1	
58-89A-145	Added	162	1	
58-89A-150	Added	162	1	
58-89A-155	Added	162	1	
58-89A-160	Added	162	1	
58-89A-165	Added	162	1	
58-89A-170	Added	162	1	
58-89A-175	Added	162	1	

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58-89A-180	Added	162	1	
58-90-1	Added	175	1	
58-90-5	Added	175	2	
58-90-10	Added	175	3	
58-90-15	Added	175	3	
58-90-20	Added	175	4	
58-90-25	Added	175	5	
58-90-30	Added	175	6	
62-3	Amended	199	1	
62-3	Amended	203	37	
62-82	Amended	199	23	
62-110	Amended	143	7	
62-328	Added	72	1	
65-44	Added	124	19.2	
65-54	Amended	202	1	
65-55	Amended	202	2	
65-57	Amended	202	3	
65-58	Amended	202	4	
65-59	Amended	202	5	
65-63	Amended	202	6	
65-64	Amended	202	7	
65-64	Amended	202	8	
65-66	Amended	202	9	
66-27.1	Amended	199	24	
66-58	Amended	124	8.17	
66-58	Amended	124	9.13	
66-58.12	Amended	129	27	
66-58.20	Amended	129	28	
66-186	Amended	190	4	
72-31	Repealed	203	38	
72-32	Repealed	203	38	
72-33	Repealed	203	38	
72-34	Repealed	203	38	
72-35	Repealed	203	38	
72-36	Repealed	203	38	
72-37	Repealed	203	38	
72-38	Repealed	203	38	
72-40	Repealed	203	38	
72-41	Repealed	203	38	
72-42	Repealed	203	38	
72-43	Repealed	203	38	
72-44	Repealed	203	38	
72-45	Repealed	203	38	
74D-7	Amended	201	1	
74F-6	Amended	177	1	
74F-18	Amended	177	2	
77-110	Added	83	1	
77-111	Added	83	1	
77-112	Added	83	1	
77-113	Added	83	1	
77-114	Added	83	1	
77-115	Added	83	1	
77-116	Added	83	1	
77-117	Added	83	1	
77-118	Added	83	1	
78A-17	Amended	203	6	
84-2.1	Amended	154	2	
84-4.1	Amended	186	4.2	
84-23	Amended	174	1	

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84-37	Amended	174	2	
85B-2	Amended	190	5	
86A-4	Amended	146	1	
86A-5	Amended	146	2	
86A-6	Amended	146	3	
86A-9	Amended	146	4	
86A-17	Amended	146	5	
86A-20.1	Added	146	6	
86A-22	Amended	146	7	
86A-24	Amended	146	8	
86A-25	Amended	146	11	
86A-26	Amended	146	9	
86A-27	Added	146	10	
87-21	Amended	203	69	
88B-21	Amended	142	1	
88B-29	Amended	142	2	
90-18.2A	Added	124	10.2E	
90-18.3	Amended	124	18.2	
90-21.18	Added	149	2.9	
90-21.22A	Amended	149	2.6	
90-85.21A	Amended	199	25	
90-95	Amended	178	3	
90-95	Amended	178	4	
90-95	Amended	178	5	
90-95	Amended	178	6	
90-171.21	Amended	199	26	
90-210.18A	Added	192	2	
90-210.18	Repealed	192	1	
90-210.69	Amended	203	7	
90-652	Amended	89	1	
95-138	Amended	203	39	
95-241	Amended	186	18.2	
95-260	Added	165	1	
95-261	Added	165	1	
95-262	Added	165	1	
95-263	Added	165	1	
95-264	Added	165	1	
95-265	Added	165	1	
95-266	Added	165	1	
95-267	Added	165	1	
95-268	Added	165	1	
95-269	Added	165	1	
95-270	Added	165	1	
95-271	Amended	199	58	
95-271	Added	165	1	
96-4	Amended	203	8	
96-5	Amended	124	13.7B	
96-8	Amended	124	13.7B	
96-9	Amended	124	13.7B	
96-9	Amended	170	3	
96-15	Amended	124	13.7B	
97-10.2	Amended	199	13	
97-165	Amended	199	20	
104E-9.1	Added	157	1	
105A-2	Amended	138	1	
105A-13	Amended	21	1	
105-32.2	Amended	170	1	
105-32.2	Amended	170	4	
105-40	Amended	84	1	

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105-113.5	Amended	170	5	
105-113.21	Amended	84	2	
105-113.35	Amended	84	2	
105-113.39	Amended	84	2	
105-113.68	Amended	135	3	
105-113.68	Amended	170	6	
105-113.82	Amended	203	5	
105-113.83	Amended	170	7	
105-113.85	Amended	84	2	
105-113.108	Amended	170	8	
105-114.1	Amended	74	1	
105-114.1	Amended	74	2	
105-114.1	Amended	170	8.1	
105-129.2A	Amended	435	3.2	
105-129.2	Amended	170	9	
105-129.2	Amended	435	3.1	
105-129.3A	Amended	203	5	
105-129.3	Amended	202	10	
105-129.3	Amended	203	5	
105-129.4	Amended	170	10	
105-129.4	Amended	170	11	
105-129.4	Amended	435	3.3	
105-129.4	Amended	435	3.4	
105-129.5	Amended	435	3.5	
105-129.6	Amended	170	12	
105-129.6	Amended	203	40	
105-129.8	Amended	170	43	
105-129.8	Amended	435	3.6	
105-129.9	Amended	170	13	
105-129.9	Amended	435	3.7	
105-129.10	Amended	124	32D.1	5/1/05
105-129.10	Repealed	124	32D.4	
105-129.15	Amended	153	1	
105-129.16D	Added	153	2	
105-129.35	Amended	170	14	
105-129.42	Amended	110	4.2	
105-129.45	Amended	110	4.1	
105-129.50	Added	124	32D.2	5/1/05
105-129.51	Amended	124	32D.4	
105-129.51	Added	124	32D.2	5/1/05
105-129.52	Added	124	32D.2	5/1/05
105-129.53	Added	124	32D.2	5/1/05
105-129.54	Added	124	32D.2	5/1/05
105-129.55	Added	124	32D.2	5/1/05
105-130.4	Amended	170	15	
105-130.45	Amended	435	5.1	
105-130.45	Amended	435	5.2	
105-130.45	Amended	435	5.3	
105-130.46	Amended	170	16	1/1/06
105-130.46	Added	435	6.1	1/1/06
105-151.12	Amended	134	1	
105-160.3	Amended	170	17	
105-163.012	Amended	124	32C.1	
105-163.015	Amended	124	32C.2	
105-164.3	Amended	124	32B.3	
105-164.3	Amended	170	18	
105-164.3	Amended	170	19	
105-164.4B	Amended	170	20	
105-164.4	Amended	110	6.1	

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105-164.4	Amended	110	6.2	
105-164.4	Amended	110	6.3	
105-164.11	Amended	22	1	
105-164.13	Amended	124	32B.2	
105-164.13	Amended	124	32B.4	
105-164.14	Amended	110	5.1	
105-164.14	Amended	124	32B.1	
105-164.14	Amended	170	21	
105-164.14	Amended	435	4.1	
105-164.29A	Amended	170	22	
105-164.44F	Amended	203	5	
105-187.19	Amended	203	5	
105-187.24	Amended	203	5	
105-228.90	Amended	110	1.1	
105-236.1	Amended	124	23.4	
105-243.1	Amended	124	23.2	
105-243.1	Amended	124	23.3	
105-243.1	Amended	170	22.5	
105-256	Amended	124	23.3	
105-259	Amended	124	32D.3	5/1/05
105-259	Amended	170	23	
105-277.2	Amended	8	1	
105-278.4	Amended	173	1	
105-449.47	Amended	170	24	
105-449.52	Amended	170	25	
105-449.54	Amended	170	26	
105-449.60	Amended	170	27	
105-449.72	Amended	170	28	
105-449.74	Amended	170	29	
105-449.81	Amended	170	30	
105-449.123	Amended	170	31	
105-469	Amended	170	32	
105-472	Amended	203	5	
105-521	Amended	124	6.3	
105-525	Added	123	1	
105-526	Added	123	1	
105-527	Added	123	1	
105-528	Added	123	1	
105-529	Added	123	1	
105-530	Added	123	1	
105-531	Added	123	1	
106-266.6	Repealed	199	27	
106-266.6	Repealed	199	27	
106-266.7	Repealed	199	27	
106-266.8	Repealed	199	27	
106-266.9	Repealed	199	27	
106-266.10	Repealed	199	27	
106-266.11	Repealed	199	27	
106-266.12	Repealed	199	27	
106-266.13	Repealed	199	27	
106-266.14	Repealed	199	27	
106-266.15	Repealed	199	27	
106-266.16	Repealed	199	27	
106-266.17	Repealed	199	27	
106-266.18	Repealed	199	27	
106-266.19	Repealed	199	27	
106-557	Amended	199	27	
108A-25	Amended	203	41	
108A-58	Amended	124	10.6	

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110-88	Amended	124	10.35	
110-136.13	Amended	203	9	
110-139.2	Amended	203	42	
111-52	Amended	199	2	
113A-67	Added	195	2.1	
113A-115.1	Amended	195	1.2	
113A-115.1	Amended	203	43	
113A-235	Amended	195	2.2	
113A-241	Amended	195	2.3	
113A-253	Amended	179	4.4	
113A-256	Amended	179	4.5	
113-35	Amended	124	12.3	
113-44.15	Amended	179	2.4	
113-77.7	Amended	179	3.5	
113-77.9	Amended	179	3.4	
113-129	Amended	160	1	
113-129	Amended	160	2	
113-168	Amended	187	6	
113-169.2	Amended	187	3	1/1/06
113-173	Amended	187	4	1/1/06
113-174	Added	187	2	1/1/06
113-174.1	Added	187	2	1/1/06
113-174.2	Added	187	2	1/1/06
113-175	Added	187	1	
113-175.1	Added	187	1	
113-175.2	Added	187	1	
113-175.3	Added	187	1	
113-175.4	Added	187	1	
113-182.1	Amended	160	3	
113-182.1	Amended	160	4	
113-201	Amended	150	1	
113-202	Amended	150	2	7/1/05
113-202	Amended	150	3	7/1/05
113-202	Amended	150	4	
113-202.1	Amended	150	5	7/1/05
113-210	Added	124	12.7B	
113-301.1	Amended	195	1.1	
113-307.1	Amended	199	3	
114-19.50	Amended	199	28	
114-43	Added	178	9	
114-43	Added	178	9	
115C-47	Amended	118	2	
115C-47	Amended	203	72	
115C-84.2	Amended	180	1	
115C-84.2	Amended	203	44	
115C-102.5	Amended	199	4	
115C-102.6B	Amended	129	29	
115C-102.6C	Amended	129	30	
115C-102.7	Amended	129	31	
115C-102.15	Amended	129	32	
115C-105.35	Amended	124	7.12	
115C-151	Amended	124	7.15	
115C-157	Amended	124	7.15	
115C-174.11	Amended	124	7.11	
115C-174.11	Amended	124	7.27	
115C-238.29D	Amended	203	45	
115C-238.29F	Amended	118	3	
115C-238.29F	Amended	203	45	
115C-249	Amended	203	72	

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115C-264	Amended	124	7.29	8/1/05
115C-264	Amended	203	72	
115C-264	Amended	203	72	
115C-296	Amended	124	7.19	
115C-296.1	Amended	124	7.19	
115C-302.1	Amended	124	7.20	
115C-302.1	Amended	180	2	
115C-316	Amended	124	31.18A	
115C-325	Amended	81	2	
115C-325	Amended	124	31.18A	
115C-325	Amended	199	57	
115C-472.5	Amended	129	33	
115C-522	Amended	199	29	
115C-522	Amended	203	72	
115C-522.1	Amended	203	72	
115C-529	Amended	129	34	
115C-548	Amended	118	4	
115C-549	Amended	199	30	
115C-550	Amended	199	30	
115C-556	Amended	118	5	
115C-557	Amended	199	30	
115C-558	Amended	199	30	
115C-565	Amended	118	6	
115D-5	Amended	124	8.4	
115D-68	Amended	124	8.6	
116-3.3	Added	154	1	
116-30.2	Amended	124	9.6	
116-40.7	Added	203	46	
116-143.1	Amended	130	2	
116-143.3	Amended	130	1	
116-238.1	Amended	203	47	
116-243	Amended	203	48	
116-260	Amended	203	73	
119-15.1	Amended	170	33	
119-15.1	Amended	203	82	
119-15.2	Amended	203	82	
119-15.3	Amended	203	82	
119-19	Amended	170	34	
120-1	Amended	434	3	
120-1	Amended	434	4	
120-2	Amended	434	1	
120-2	Amended	434	2	
120-2.3	Added	434	8	
120-2.4	Added	434	9	
120-2.5	Added	434	10	
120-4.22A	Amended	124	31.17	
120-4.27	Amended	147	4	
120-20	Amended	203	49	
120-29.5	Added	203	49	
120-30.9B	Amended	434	12	
120-37	Amended	124	31.8	
120-37	Amended	124	31.9	
120-47.2	Amended	203	50	
120-70.108	Amended	170	35	
120-70.120	Amended	161	3.2	
120-70.121	Amended	161	3.2	
120-70.122	Amended	161	3.2	
120-85	Amended	199	31	1/1/06
120-87	Amended	199	31	1/1/06

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120-96	Amended	199	31	1/1/06
120-99	Amended	199	31	
120-100	Amended	199	31	
120-122	Amended	187	5	
120-122	Amended	195	7	
120-123	Amended	129	35	
120-123	Amended	199	27	
120-230	Amended	129	7A	
120-230	Amended	129	7A	
120-231	Amended	129	7A	
120-231	Amended	129	36	
120-232	Amended	129	7A	
121-4	Amended	203	51	
121-34	Amended	195	1.3	
121-42	Amended	195	1.4	
122A-4	Amended	124	31.15	
122C-22	Amended	199	32	
122C-30	Amended	149	2.8	
122C-80	Amended	124	10.19D	
122C-115	Amended	124	10.26	
122C-142.1	Amended	197	1	10/1/05
122C-142.1	Amended	197	2	10/1/08
122C-142.1	Amended	197	3	
122C-191	Amended	149	2.7	
122C-261	Amended	23	1	
122C-265	Amended	23	2	
122C-273	Amended	23	2	
122C-281	Amended	23	1	
122C-290	Amended	23	2	
122D-4	Amended	195	5.1	
126-5	Amended	124	31.27	
126-5	Amended	129	37	
127A-202.1	Amended	130	3	
127C-2	Amended	49	1	
128-27	Amended	136	1	
128-27	Amended	147	2	
128-27	Amended	147	3	
130A-2	Amended	80	1	
130A-12	Amended	80	4	
130A-141.1	Added	80	5	
130A-144	Amended	80	6	
130A-145	Amended	80	2	
130A-274	Amended	195	6.1	
130A-279	Amended	195	6.2	
130A-284	Added	178	7	
130A-315	Amended	143	8	
130A-475	Amended	80	3	
130A-475	Amended	199	33	
130A-476	Amended	80	7	
130A-476	Amended	124	10.34	
130A-480	Added	124	10.34	
131D-21.2	Added	149	2.3	
131D-40	Amended	124	10.19D	
131E-76	Amended	149	1.1	
131E-76	Amended	149	2.4	
131E-76	Amended	199	49	
131E-95	Amended	149	2.5	
131E-101	Amended	149	2.1	
131E-107	Amended	149	2.2	

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131E-256	Amended	203	52	
131E-265	Amended	124	10.19D	
132-1.2	Amended	127	17	6/1/05
132-6.2	Amended	129	38	
135-1	Amended	81	1	
135-1	Amended	199	34	
135-3	Amended	124	31.18A	
135-3	Amended	199	57	
135-5	Amended	124	31.17	
135-5	Amended	147	1	
135-7	Amended	124	31.20	
135-39.4A	Amended	124	31.27	
135-39.6A	Amended	124	31.21	
135-40.1	Amended	124	31.21	
135-40.2	Amended	124	31.21	
135-40.2	Amended	199	34	
135-40.7B	Amended	124	31.28	
135-40.13A	Added	124	31.25	
135-64	Amended	147	5	
135-64	Amended	147	6	
135-65	Amended	124	31.17	
135-101	Amended	78	1	
135-105	Amended	78	2	
135-106	Amended	78	3	
135-106	Amended	78	4	8/1/05
136-18	Amended	168	1	
136-175	Amended	124	30.21	
136-176	Amended	124	30.3	
136-176	Amended	124	30.21	
136-178	Amended	124	30.21	
136-179	Amended	124	30.21	
136-179	Amended	184	4	
136-180	Amended	124	30.19	
136-180	Amended	148	4	
136-182	Amended	124	30.21	
136-185	Amended	124	30.21	
136-202	Amended	203	5	
136-220	Added	114	1	
136-221	Added	114	1	
136-222	Added	114	1	
142-15.3	Amended	170	41	
142-80	Amended	203	79	
142-81	Amended	203	79	
142-82	Amended	203	79	
142-83	Amended	203	79	
142-84	Amended	203	79	
142-85	Amended	203	79	
142-86	Amended	203	79	
142-87	Amended	203	79	
142-88	Amended	203	79	
142-89	Amended	203	79	
142-90	Amended	203	79	
142-91	Amended	203	79	
142-92	Amended	203	79	
142-93	Amended	203	79	
142-94	Amended	203	79	
142-95	Added	179	7.1	
142-100	Added	179	5.1	
142-101	Added	179	5.1	

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143B-30.1	Amended	124	22A.1	
143B-146.13	Amended	129	45	
143B-168.12	Amended	124	10.37	
143B-262	Amended	186	1.2	
143B-279.12	Added	124	12.12	
143B-289.52	Amended	187	7	
143B-289.52	Amended	187	8	
143B-387.1	Amended	124	19.10	
143B-426.24	Amended	137	1	
143B-431	Amended	124	6.26	
143B-431	Amended	124	13.9A	
143B-431	Amended	199	27	
143B-432.1	Added	124	13.9A	
143B-433	Amended	199	27	
143B-437.02	Amended	124	6.26	
143B-437.02	Amended	124	6.26	
143B-437.02	Added	435	1	
143B-437.06	Repealed	124	13.6	
143B-437.47	Amended	129	45A	
143B-437.51	Amended	435	2.1	
143B-437.52	Amended	124	32G.1	
143B-437.52	Amended	435	2.2	
143B-437.53	Amended	435	2.3	
143B-437.54	Amended	435	1.4	
143B-437.54	Amended	435	2.4	
143B-437.56	Amended	435	2.5	
143B-437.57	Amended	124	32G.1	
143B-437.57	Amended	124	32G.1	
143B-437.58	Amended	124	32G.1	
143B-437.62	Amended	124	32G.1	
143B-437.63	Added	124	6.12	
143B-437.70	Added	88	1	
143B-437.71	Added	88	1	
143B-437.72	Added	88	1	
143B-437.73	Added	88	1	
143B-437.74	Added	88	1	
143B-438.15	Added	124	13.7A	
143B-438.16	Added	124	13.7A	
143B-438.17	Added	124	13.7A	
143-6	Amended	129	39	
143-6.1	Amended	124	6.24	
143-6.1	Repealed	196	1	
143-6.2	Added	196	2	7/1/05
143-10	Amended	124	21.1	
143-15.3E	Added	124	6.12	
143-34.1	Amended	199	35	
143-48	Amended	203	72	
143-48.3	Amended	129	40	
143-48.3	Amended	129	40A	
143-48.3	Amended	129	41	
143-48.3	Amended	203	72	
143-49	Amended	203	72	
143-52.1	Amended	129	41A	
143-53	Amended	203	72	
143-57.1	Amended	115	1	
143-59.1A	Added	124	6.1	
143-64	Amended	199	38	
143-64.6	Repealed	199	36	
143-129.8	Amended	199	36	

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143-129.8	Amended	203	10	
143-138	Amended	124	21.1	
143-138	Amended	124	21.2	
143-143.5	Added	199	37	
143-166.2	Amended	124	31.18C	
143-214.6	Repealed	195	3.1	
143-214.7	Amended	124	6.29	
143-214.11	Amended	188	2	
143-214.12	Amended	188	3	
143-215.1B	Amended	195	1.6	
143-215.1	Amended	195	1.5	
143-215.6A	Amended	124	6.29	
143-215.8C	Amended	195	3.2	
143-215.8D	Amended	195	3.3	
143-215.8D	Amended	195	3.4	
143-215.10B	Amended	176	1	
143-215.10C	Amended	176	2	
143-215.10G	Amended	176	3	
143-215.22J	Repealed	195	3.1	
143-215.22K	Repealed	195	3.1	
143-215.74	Amended	124	12.6	
143-215.94E	Amended	124	30.10	
143-215.107A	Amended	203	5	
143-215.107C	Amended	195	2.4	
143-260.10	Amended	25	2	
143-355.1	Amended	195	2.5	
143-650	Amended	124	18.2	
143-650	Repealed	124	18.2	
143-651	Amended	124	18.2	
143-652	Repealed	124	18.2	
143-652.1	Added	124	18.2	
143-654	Amended	124	18.2	
143-655	Amended	124	18.2	
143-656	Amended	124	18.2	
143-661	Amended	129	42	
143-663	Amended	129	43	
143-719	Amended	179	1.4	
143-722	Amended	196	4	
143-725	Amended	129	44	
143-735	Added	124	6.4	
143-736	Added	124	6.4	
143-737	Added	124	6.4	
146-22.3	Added	188	4	
146-22.4	Added	188	5	
146-22.5	Added	188	6	
147-11	Amended	124	31.1	
147-16.2	Amended	203	50	
147-33.72A	Amended	129	2	
147-33.72A	Added	129	2	
147-33.72B	Added	129	2	
147-33.72C	Added	129	2	
147-33.72D	Added	129	2	
147-33.72E	Added	129	2	
147-33.72F	Added	129	2	
147-33.72G	Added	129	2	
147-33.72H	Added	129	2	
147-33.75	Amended	129	1	
147-33.75	Amended	129	8	
147-33.75	Amended	129	9	

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147-33.76	Amended	129	1	
147-33.76	Amended	129	3	
147-33.77	Amended	129	1	
147-33.78	Amended	129	1	
147-33.78	Repealed	129	4	
147-33.79	Amended	129	1	
147-33.79	Repealed	129	5	
147-33.82	Amended	129	10	
147-33.82	Amended	129	11	
147-33.82	Amended	129	13	
147-33.83	Amended	129	15	
147-33.84	Amended	129	16	
147-33.85	Repealed	129	17	
147-33.86	Repealed	129	18	
147-33.87	Amended	129	19	
147-33.88	Amended	129	20	
147-33.89	Amended	129	21	
147-33.90	Amended	129	22	
147-33.91	Amended	129	23	
147-33.92	Amended	203	37	
147-33.95	Amended	129	24	
147-33.101	Amended	129	25	
147-33.103	Amended	129	26	
147-33.110	Amended	129	14	
147-33.110	Added	129	12	
147-33.110	Added	129	14	
147-33.111	Amended	129	14	
147-33.111	Added	129	12	
147-33.112	Amended	129	14	
147-33.112	Added	129	12	
147-33.113	Amended	129	14	
147-33.113	Added	129	12	
147-54.11	Repealed	124	13.9A	
147-54.12	Repealed	124	13.9A	
147-54.13	Repealed	124	13.9A	
147-54.14	Repealed	124	13.9A	
147-54.15	Repealed	124	13.9A	
147-54.16	Repealed	124	13.9A	
147-54.17	Repealed	124	13.9A	
147-54.18	Repealed	124	13.9A	
147-54.19	Repealed	124	13.9A	
147-64.6	Amended	129	46	
147-68	Amended	129	46A	
147-69	Amended	203	11	
147-69.2	Amended	124	30.22	
147-86.30	Amended	179	1.3	
147-86.35	Amended	196	3	
148-22.2	Amended	203	53	
148-32.1	Amended	199	48	
148-32.1	Amended	203	54	
148-46.2	Amended	203	53	
150B-1	Amended	88	1	
150B-1	Amended	435	1.3	
150B-21.1	Amended	156	1	
150B-21.3	Amended	156	2	
150B-21.3	Amended	156	3	
150B-33	Amended	156	4	
153A-15.1	Added	188	1	
153A-143	Added	152	1	

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153A-155	Amended	106	2	
153A-155	Amended	120	3	
153A-155	Amended	170	36	
153A-155	Amended	170	42	
153A-155	Amended	199	60	
153A-225	Amended	199	46	
153A-300	Amended	170	37	
153A-317.11	Amended	170	38	
153A-317.17	Amended	170	39	
153A-321	Amended	199	41	
153A-322	Amended	199	41	
153A-323	Amended	75	1	
153A-442	Amended	199	39	
157-9	Amended	199	40	
159C-7	Amended	132	1	
159D-7	Amended	132	2	
159D-65	Added	435	7.1	
159D-66	Added	435	7.1	
159D-67	Added	435	7.1	
159D-68	Added	435	7.1	
159D-69	Added	435	7.1	
159G-3	Amended	195	1.7	
159G-10	Amended	195	1.8	
159I-30	Amended	151	2	
159I-30	Amended	151	3	
159-99	Amended	170	40	
159-100	Amended	170	40	
160A-58.1	Amended	57	1	
160A-58.1	Amended	99	1	
160A-58.1	Amended	203	13	
160A-176.2	Amended	203	55	
160A-199	Added	152	2	
160A-215	Amended	105	3	
160A-215	Amended	170	36	
160A-215	Amended	170	42	
160A-215	Amended	199	60	
160A-361	Amended	199	41	
160A-363	Amended	199	41	
160A-364	Amended	75	2	
160A-392	Amended	199	41	
160A-425.1	Added	6	1	
160A-428	Amended	6	1	
160A-432	Amended	6	1	
160A-480.3	Amended	158	3.1	
160A-480.3	Amended	158	3.2	
160A-480.3	Amended	158	3.3	
160A-493	Amended	199	39	
160A-536	Amended	151	1	
160A-536	Amended	203	5	
160A-543	Amended	151	4	
160A-635	Amended	203	56	
161-31	Amended	65	1	
162A-6	Amended	203	5	
163-1	Amended	127	12	
163-1	Amended	434	6	
163-34	Amended	203	57	
163-35	Amended	203	58	
163-42.1	Amended	127	17	6/1/05
163-82.4	Amended	127	4	

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§	*Effect*	*Chapter*	*Section*	*Date*
163-82.6	Amended	127	9	
163-82.10B	Added	127	17	6/1/05
163-82.10	Amended	127	17	6/1/05
163-82.13	Amended	127	17	6/1/05
163-96	Amended	127	14	
163-97.1	Amended	127	10	
163-112	Amended	127	13	
163-112	Amended	434	5	
163-122	Amended	127	8	
163-123	Amended	127	7	
163-132.3A	Added	127	1	
163-132.3	Amended	127	1	
163-132.3	Amended	434	13	
163-166.12	Amended	127	3	
163-213.5	Amended	127	6	
163-213.7	Amended	127	11	
163-257	Amended	127	9	
163-278	Amended	127	15	
163-278.6	Amended	125	3	
163-278.6	Amended	203	12	
163-278.7	Amended	203	59	
163-278.8	Amended	125	5	
163-278.12A	Repealed	125	4	
163-278.12	Amended	127	16	
163-278.14	Amended	125	5	
163-278.38Z	Amended	203	12	
163-278.41	Amended	434	14	
163-278.64	Amended	203	60	
163-278.80	Added	125	1	
163-278.81	Added	125	1	
163-278.82	Added	125	1	
163-278.83	Added	125	1	
163-278.90	Added	125	2	
163-278.91	Added	125	2	
163-278.92	Added	125	2	
163-278.93	Added	125	2	
163-296	Amended	127	8	
163-299	Amended	127	5	
168-2	Amended	203	61	
168-4.2	Amended	203	62	
168-4.3	Amended	203	62	
168-4.4	Amended	203	62	
920-4-10	Amended	128	16	

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